Supreme Court, U.S.
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CASE NO.____________ OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES
October 1995 Term

ANTHONY GURINO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the entry of a guilty plea waives a motion to dismiss an indictment for failure to charge an offense?

2. Whether an indictment charging the offense of money laundering, 18 U.S.C. § 1956, based upon the specified unlawful activity of mail fraud, 18 U.S.C. § 1341, must set forth a scheme to deprive another of money or property, under McNally v. United States and its progeny, and must identify a scheme which affects a financial institution, under the former 18 U.S.C. § 1956(c)(7)(D), in order to insure the protections of the grand jury as required in the United States Constitution, Amendment 5?

3. Whether a violation of mail fraud, 18 U.S.C. § 1341, the specified unlawful activity in the money laundering indictment at issue, can be based upon a scheme to defraud another of the "right to control" the expenditure of public funds through the non-disclosure of information?

4. Whether Fed.R.Crim.P. 32(e) requires leave to withdraw a guilty plea prior to sentencing when there has been no trial and the defendant has challenged the indictment for failure to charge an offense?

5. Whether a sentence for money laundering can be increased by the amount laundered when the underlying specified unlawful activity involved no monetary loss?

6. Whether a sentence can be enhanced for obstruction of justice without a determination that the defendant committed each of the elements of perjury?

7. Whether the courts may apply retroactively amendments to the United States Sentencing Guidelines which do not implicate the ex post facto clause, Art. I, § 9, cl. 3, United Stated Constitution, either to effectuate the congressional intent behind the revisions or to determine the appropriateness of applying the Sentencing Guidelines to this offense?

PARTIES TO PROCEEDING

Petitioner:	Anthony Gurino
Respondent:	United States of America
Other Parties Below:	Barbara Ann Pace Gurino Louis Gurino Vincent Sorena Patrick Borello Augusto Aufiero

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REPORTS OF OPINIONS BELOW

There are no reports of opinions by the United States District Court for the Northern District of Florida in this case; the Eleventh Circuit's opinions are published at 56 F.3d 1388 (11th Cir. 1995) (table) and 63 F.3d 1114 (11th Cir. 1995) (table).

STATEMENT OF JURISDICTION

On June 4, 1993, the District Court denied Gurino's Motion to Withdraw Guilty Plea. on June 11, 1993, the District Court denied Gurino's Motion to Dismiss the Indictment for Failure to charge an Offense and imposed sentence on Gurino. Gurino appealed the June 4, 1993 Order denying the Motion to Withdraw Guilty Plea, the June 11, 1993 Order denying the Motion to Dismiss the Indictment and the June 11, 1993 sentence to the United States Circuit Court of Appeals of the Eleventh Circuit. On May 15, 1995 the Eleventh Circuit affirmed the District Court's rulings without opinion.

Gurino timely filed a suggestion of rehearing en banc and petition for rehearing in the Eleventh Circuit which denied rehearing by order dated July 27, 1995.

This Court has jurisdiction to review the judgment by writ of certiorari, pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

1. The United States Constitution, Amendment 5.
2. 18 U.S.C. § 1341.
3. 18 U.S.C. § 1956.
4. Fed.R.Crim.P. 12(b)(2).
5. Fed.R.Crim.P. 32(e).
6. Amendment 18, United States Sentencing Guidelines (1995).

STATEMENT OF THE CASE

On February 12, 1992, Anthony Gurino, his wife Barbara Ann Pace Gurino, his son Louis Gurino, and Vincent Sorena, Patrick Borello and Augusto Aufiero were indicted in the United States District Court for the Northern District of Florida for violations of 18 U.S.C. §§ 2 [aiding and abetting], 371 [conspiracy], and 1956(a)(1)(B)(i) [money laundering with a specified unlawful activity of mail fraud, § 1341] based upon a conspiracy to launder the proceeds of a scheme to defraud the New York City Housing authority ("NYCHA") in the awarding of plumbing contracts partially funded by the United States Department of Housing and Urban Development ("HUD"). The District Court had jurisdiction pursuant to 18 U.S.C. § 3231.

The indictment states the object of the mail fraud scheme was to conceal Anthony Gurino's control of an proprietary interest in Hi-Tech Mechanical, Inc. ("Hi-Tech") in order to obtain plumbing contracts with NYCHA, without which concealment of Anthony Gurino's interest in Hi-Tech, Hi-Tech might not otherwise have been able to obtain the NYCHA contracts. The indictment does not allege any mail fraud scheme to deprive NYCHA, HUD or any other entity of a monetary or property right. The District Court found that there was no monetary loss to NYCHA or HUD, and that the contracts were performed satisfactorily.

Defendants moved to dismiss the indictment for failure to charge an offense, pursuant to Fed.R.Cim.P. 12(b)(2), on January 28, 1993. The Government filed its response on February 1, 1993, to which the Defendants filed their reply on February 5, 1993. The District Court did not rule on the motion.

Sorena, Borello and Aufiero entered plea agreements pursuant to Fed.R.Crim.P. 20 on February 3, 1993, for a single count information charging mail fraud, 18 U.S.C. § 1341, and each was sentenced to probation in the Eastern District of New York. On February 8, 1993, the date set for trial, Anthony Gurino and Barbara Ann Pace Gurino signed plea agreements and the Government moved to dismiss the indictment against Louis Gurino. The District Court conducted Rule 11 hearings on the plea agreements on February 19, 1993, accepted the guilty plea of Anthony Gurino to one count of 18 U.S.C. § 371 and one count of § 1956, and the guilty plea of Barbara Ann Pace Gurino to a superseding information of one count of 26 U.S.C. § 7206(1), and then afterwards granted the Government's Motion to Dismiss the indictment against their son, Louis Gurino.

On April 13, 1993, after pleading guilty but before sentencing, Anthony Gurino filed a Motion to Withdraw Guilty Plea and refiled the Motion to Dismiss for Failure to Charge an Offense. The District Court conducted an evidentiary hearing on the Motion to Withdraw the Guilty Plea on May 27 and 28, 1993, and denied the Motion to Withdraw Guilty Plea on June 4, 1993.

The District Court held a sentencing hearing on June 11, 1993. Prior to sentencing Anthony Gurino, the District Court ruled Anthony Gurino waived his right to challenge the indictment by pleading guilty and denied the motion to dismiss. The District Court adopted the finds in the presentence investigation report, including the finding that there was no monetary loss to either NYCHA or HUD because of the fraud or crimes charged. The District then sentenced Anthony Gurino 97 months incarceration, calculating the base offense level for money laundering at 20, adjusting the offense level upwards two points finding the funds laundered exceeded $200,000, two points based upon a finding that Anthony Gurino was an organizer, leader or supervisor in the criminal activity, and two points for obstruction of justice based upon the District court's statement that Anthony Gurino lied in his guilty plea colloquy when Gurino said that he was not under duress and was pleading voluntarily, which was contradicted at the plea withdrawal hearing when Gurino stated he was under duress and did not plead voluntarily.

On June 18, 1993, Anthony Gurino field a Notice of Appeal. On May 15, 1995, the Eleventh Circuit affirmed the District Court's rulings without opinion. On June 3, 1995, Anthony Gurino filed a suggestion of rehearing en banc and petition for rehearing, which was denied by Order dated July 27, 1995.

Anthony Gurino remains incarcerated.

ARGUMENT

I. The decision that the guilty plea waives the challenge to the indictment for failure to charge an offense is in conflict with the decisions of other Circuits, and sanctions the District Court's departure from the accepted and usual course of judicial proceedings and plain language of the Federal Rules of Criminal Procedure so as to call for an exercise of this Court's power of supervision.

The District Court denied Gurino's motion to dismiss the indictment for failure to charge an offense, stating that by pleading guilty Gurino waived all non-jurisdictional defenses to the charge, citing McCoy v. Wainwright, 804 F.2d 1196, 1198 (11th Cir. 1986). While the statement of the law by the District Court is accurate, its application to this factual situation is error. The District Court's determination that Gurino's motion to dismiss the indictment for failure to charge an offense is non-jurisdictional, affirmed by the Eleventh Circuit without opinion, directly contradicts the published opinions of the Second , Third, Fifth, Eighth and Ninth Circuits and prior binding precedent in the Eleventh Circuit, all of which state clearly that the challenge to an indictment for failure to charge an offense is a jurisdictional challenge which can be raised at any time. See Hayle v. United States, 815 F.2d 879, 881 (2d Cir. 1987); Virgin Islands v. Greenidge, 600 F.2d 437, 439 n.2 (3d Cir. 1979); United States v. Meacham, 626 F.2d 503, 509-510 (5th Cir. 1980); United States v. Mallen, 843 F.2d 1096, 1102 (8th Cir. 1988); United States v. Montilla, 870 F.2d 549, 552 (9th Cir. 1989); United States v. Bell, 22 F.3d 274, 275 (11th Cir. 1994). Cf., Menna v. New York, 423 U.S. 61, 62-63 (1975). Indeed, the plain language of Fed.R.Crim.P. 12(b)(2) states that an objection to an indictment for failure to charge an offense "shall be noticed by the court at any time during the pendency of the proceeding[.]"

The Eleventh Circuit, by affirming the order of the District Court which contravenes the plain language of the Federal Rules of Criminal Procedure, the opinions of other Circuits, and the binding precedent of the Eleventh Circuit and the former Fifth Circuit[1], sanctioned the District Court's departure from the accepted and usual course of judicial proceedings so as to call for an exercise of this Court's power to supervision, pursuant to Rule 10.1(a)., Rules of the Supreme Court of the United States. Accordingly, Gurino petitions this Court to announce definitively that a challenge to an indictment for failure to charge an offense is jurisdictional and, therefore, cannot be waived by pleading guilty. This is an important question regarding the criminal jurisdiction of the federal courts on which this Court's supervision is required.

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[1] The Eleventh Circuit determined en banc that decisions of the United States Court of Appeals for the Fifth Circuit handed down on and prior to September 30, 1981, shall be binding as precedent in the Eleventh Circuit and its District Courts. Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

II. The indictment fails to charge the offense of money laundering based upon the specified unlawful activity of mail fraud, as the indictment does not contain the elements of mail fraud and subjects Gurino to prosecution for offenses which are not charged in the indictment by the grand jury in violation of the Fifth Amendment to the United States Constitution.

As the Eleventh Circuit affirmed Gurino's conviction upon a guilty plea and sentencing without opinion, rejecting Gurino's assertion that the indictment failed to charge an offense, the Eleventh Circuit has approved the sufficiency of the indictment. The indictment fails to set out each material element of the offense of money laundering, as the indictment does not separately charge nor include or factual allegations to support the specified unlawful activity of mail fraud.

This is a novel issue. Counsel have been unable to locate any authority, nor did the Government cite any authority in the proceedings below, on the extent to which a money laundering indictment must allege the elements of the specified unlawful activity to charge sufficiently a violation of § 1956.[2]

In rejecting Gurino's appeal, the Eleventh Circuit decided that a money laundering indictment need not allege the elements of the specified unlawful activity when that offense is not separately charged in the indictment. The Eleventh Circuit's position contravenes the protections guaranteed by the Fifth Amendment, as announced by this Court in Stirone v. United States, 361 U.S. 212, 215-219 (1960).

In Stirone, this Court emphasized:

> The very purpose of the requirement that a man be indicted by grand jury is to limit his jeopardy to offenses charged by a group of his fellow citizens acting independently of either prosecuting

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[2] Counsel believe this to be a novel issue with regard to all compound crimes; that is, crimes which involve the violation of a separate crime as an element thereof, such as money laundering and RICO, 18 U.S.C. §§ 1956 and 1961 et seq. The exception is the compound crime of conspiracy, 18 U.S.C. § 371, which does not require an indictment allege all of the elements of the offense which is the object of the conspiracy with the same technical precision as in a substantive count. Wong Tai v. United States, 273 U.S. 77, 81 (1927). However, in a conspiracy the elements of the object are not necessary in order to establish a violation, as the underlying offense need not be committed, or even attempted. See United States v. Conley, 37 F.3d. 970, 981 n.15 (3d Circ. 1994) ("For this reason, a conspiracy indictment need not allege every element of the underlying offense, but need only put defendants on notice that they are charged with a conspiracy to commit the underlying substantive offense.") (citations omitted). By contrast, money laundering requires proceeds of the specified unlawful activity, under § 1956(a)(1)(B)(i) as charged here, which therefore requires a successful underlying offense. See United States v. Perkins, 748 F.2d 1519, 1526 n.11 (11th Cir. 1984), distinguishing conspiracy from the rationale regarding other offenses in Russell v. United States, 369 U.S. 749 (1962).

> attorney or judge. Thus the basic protection of the grand jury was designed to afford is defeated by a device or method which subjects the defendant to prosecution for [illegal acts] which the grand jury did not charge.

Id. at 218 (footnote omitted). Accord, Hamling v. United States, 418 U.S. 87 (1974).

Accordingly, the Eighth Circuit has held that an indictment is fatally defective if an element of the crime is missing in substance. Mallen, 843 F.2d at 1102. The Eleventh Circuit's affirmation contradicts the Eight Circuit's holding, as the indictment fails to state the element that the scheme was to defraud another of money or property. In fact, the indictment charges the substance of a completely different statute:

> [three co-defendants] induced the New York City Housing Authority to enter into plumbing contracts [based upon misrepresentations]. Additionally, and as part of the conspiracy, false statements were made to the United States Department of Housing and Urban Development, which funded the money disbursed by the New York City Housing Authority[.]

The indictment's language fails to charge that the scheme was to defraud another of money or property; however, the language clearly charges the substance of a violation of 18 U.S.C. § 1012, which criminalizes fraudulent reports to HUD. The indictment, therefore, fails to charge money laundering, as no mail fraud adequately is alleged, and § 1012 is not a specified unlawful activity under § 1956. Thus, the grand jury's protection as recognized in Stirone is absent, as Gurino is incarcerated for money laundering with the specified unlawful activity of mail fraud, based upon a scheme to defraud NYCHA and HUD of money or property which was not charged by the grand jury.

The Government's attempts to create valid allegations of a fraud scheme, more fully described at page 15, infra, cannot salvage the defective indictment. See Stirone, supra; United States v. Price, 857 F.2d 234, 236 (4th Cir. 1988) ("the government should not be allowed to amend this indictment to allege a scheme to defraud of tangible property, as such a change would violate the defendants' fifth amendment right to be tried only for offenses charged by a grand jury.") Accord, United States v. Conlon, 481 F.Supp. 654, 669 (D.D.C. 1979), quoting United States v. Thomas, 444 F.2d 919 (D.C. Cir. 1971) allowing prosecutor to insert elements in indictment violates basic principles of fundamental fairness).

Although the issue appears novel, logically an indictment fails to charge all the elements of the compound statute of money laundering if it fails to set out each element of the specified unlawful activity which is a prerequisite to money laundering. See United States v. D'Alessio, 822 F.Supp 1134, 1146 (D.N.J. 1993). In D'Alessio, the court dismissed money laundering charges based upon the dismissal of the mail fraud charges which constituted the specified unlawful activity for the money laundering charges.

The indictment also fails to charge a mail fraud scheme which affects a financial institution, as required by the 1990 amendment to the Money Laundering Act formerly codified at 18 U.S.C. § 1956(c)(7)(D),[3] nor can a scheme which affects a financial institution be found in any of the allegations in the indictment. Accordingly, if §1956(c)(7)(D) (1990), in effect on February 12, 1992 when the indictment was returned, requires the specified unlawful activity of mail fraud to affect a financial institution as an element of money laundering, the indictment fails to charge an offense and the decisions of the courts below are in error.

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[3] In 1992, Congress again amended the Money Laundering Act to delete the language regarding mail and wire fraud "affecting a financial institution" from § 1956(c)(7)(D) which did not become effective until October 28, 1992, more than 8 months after the indictment was returned by the grand jury.

The interpretation of 18 U.S.C. § 1956(c)(7)(D) (1990) appears to be a novel issue, as counsel for Gurino has been unable to locate any authority regarding the language in question and the Government cited none in the proceedings below. However, the Eleventh Circuit's decision conflicts with previous decisions of this Court, stating that the courts are to implement the plain meaning of the language of statutes. See Ratzlaf v. United States, ____U.S._____, 114 S.Ct. 655, 662 (1994); Smith v. United States, ______U.S._____, 113 S.Ct. 2050, 2057 (1993); Connecticut National Bank v. Germain, 503 U.S. 249 (1992) (collecting cases); Train v. Colorado Public Interest Research Group, 426 U.S. 1 10 (1976).

The Government has argued: that the limitation upon the specified unlawful activity of mail fraud to schemes which affect a financial institution is a nullity, as § 1956(c)(7)(A) includes all predicate acts under RICO in the definition of specified unlawful activity ; and that because mail and wire fraud without the limitation of "affecting a financial institution" are predicate acts under 18 U.S.C. § 1961(1), the limitation in 18 U.S.C. § 1956(c)(7)(D) is meaningless, and the 1992 amendment merely "corrects" a "drafting error" in the 1990 amendment. This argument, which the Eleventh Circuit sanctioned, directly contradicts this Court's announcement in Ratzlaf, which held that the courts should not construe statutes to render the words describing an element to be surplusage, particularly when construing the elements of criminal offense. Ratzlaf, 114 S.Ct. at 659.

Furthermore, the retroactive application of the 1992 amendment to § 1956(c)(7)(D) violates the previous decisions of this Court, whether or not the 1992 amendment merely corrected a "drafting error" as the Government contends. See Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991) ("It is well established that, absent a clear direction by Congress to the contrary, a law takes effect on the date of its enactment") (citations omitted); United States v. Granderson, _____U.S._____, 114 S.Ct. 1259, 1275 (1994) (Justice Kennedy, concurring in judgment) (the court must follow the statutory language and not try to correct Congress' drafting errors).

Accordingly, Gurino petitions this Court for a writ of certiorari on the important question of statutory construction of the federal criminal code which the Eleventh Circuit has decided in a way that conflicts with applicable decisions of this Court, pursuant to Rule 10.1(c).

III. The Circuits are in conflict regarding the issue whether a violation of 18 U.S.C. § 1341, the specified unlawful activity in the money laundering indictment, can be based upon a scheme to defraud another of the right to control the expenditure of public funds through the non-disclosure of information, under this Court's decisions in McNally v. United States and Carpenter v. United States.

Although the indictment is devoid of allegations on the issue, the Government has characterized the purported mail fraud as a scheme to defraud the Government of the right to control its contracts by deceiving NYCHA and HUD concerning the true ownership and control of the contractor.[4] This Court announced in McNally v. United States, 483 U.S. 350 (1973), that § 1341 requires a scheme to defraud another of money or property, which was later clarified to include intangible property rights, in Carpenter v. United States, 848 U.S. 19 (1987). The Circuits are divided, however, on whether a scheme to defraud another of the right to control the expenditure of funds through the non-disclosure of information sufficiently charges a scheme to defraud another of property.

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[4] The Government advances this scheme to defraud for the first time on appeal. In the Statement of Fact in Support of Guilty Plea filed with the District Court, the Government described the mail fraud as omitting Gurino's name from the contract application, which "did not put NYCHA or HUD on notice to exercise their power to regulate the contracting process by holding a due process hearing to determine the suitability of the bidder[,]" However, the Government appears to have abandoned on appeal the "right to regulate" theory, which has been rejected by the clear weight of authority. See United States v. F.J. Vollmer & Co., Inc., 1 F.3d 1511, 1521 (7th Cir. 1993) (collecting cases).

The Eighth Circuit, for purposes of mail fraud, unequivocally has stated: "We determine that the right to control spending constitutes a property right." United States v. Shyres, 898 F.2d 647, 652 (8th Cir. 1990). In Shyres, the Eight Circuit determined a corporation's right to control spending constituted a property right of which the corporation was deprived through a mail fraud scheme to send the corporation's sales promotion business to a defendant's company in return for kickbacks. Id. At 652-53.

Conversely, the Second Circuit has held that "the loss of the right to control the expenditure of public funds through the loss of the ability to make a fully informed decision" is not sufficient to constitute mail fraud under § 1341. United States v. Mittelstaedt, 31 F.3d 1208, 1217 (2d Cir. 1994). In Mittelstaedt, the Second Circuit reversed a conviction for mail fraud based upon a scheme to defraud two communities by their consulting engineer who concealed from the planning boards his hidden ownership interest in development projects on which the communities consulted the engineer. Id.

The Second Circuit rejected the "right to control" theory, holding that information fraudulently concealed is not property, under Carpenter, unless the information withheld has some independent value or bears on the ultimate value of the transaction. Mittelstaedt, 31 F.3d at 1217. Thus, the Government must show that the omission caused pecuniary harm or that the victim could have negotiated a better deal if not deceived. Id. Under this rationale, Gurino could not be charged with mail fraud, as the Government admits there was no monetary loss to NYCHA or HUD, and Hi-Tech was the bonded low bidder and presented the best deal for NYCHA. See also United States v. Gimbel, 830 F.2d 621, 627 (7th Cir. 1987) (reversing mail fraud conviction where "the defendant is accused of not providing information to government officials 'whose actions could have been affected by the disclosure'") (quoting McNally, 107 S.Ct. at 2882 n.9); O'Malley v. O'Neill, 887 F.2d 1557, 1559 n.5 (11th Cir. 1989) (rejecting claimed RICO predicate act of mail fraud based on false reports submitted to the Immigration and Naturalization Service).

Both the Second and Eighth Circuits draw support from this Court's opinion in Carpenter v. United States, which held that intangible property rights, such as confidential business information which has independent value, are cognizable under the mail fraud statute. Adding to the uncertainty caused by this division between the Second and Eighth Circuits, the Third Circuit has questioned without deciding the validity of the "right to control" theory. United States v. Henry, 29 F.3d 112, 114 n.4 (3d Cir. 1994). In Henry, the Third Circuit declined to decide whether the right to control how money was invested is sufficient to establish mail fraud, as the theory was not advanced in the indictment and, therefore, unavailable on appeal. Id. at 114.

The Eleventh Circuit, although faced with same dilemma as the Third Circuit since the Government in this case has presented a theory not alleged in the indictment, affirmed the decisions of the District Court thereby approving the right to control theory, albeit without opinion. While the Eleventh Circuit's action is supported by the Eighth Circuit's opinion in Shyres, this position is contradicted directly by the Second Circuit's opinion in Mittelstaedt, and questioned by the Third Circuit's opinion in Henry. Accordingly, Gurino petitions this Court to resolve the conflict between the Circuits on the viability of the right to control theory under this Court's opinion in Carpenter on the important question of limitations on the breadth of the criminal mail fraud statute, 18 U.S.C. § 1341.

IV. The Eleventh Circuit's affirmation of the denial of Gurino's Motion to Withdraw Guilty Plea made prior to sentencing is in conflict with the Eleventh Circuit's binding precedent, and sanctions the District Court's departure from the accepted and usual course of judicial proceedings and the plain language of the Federal Rules of Criminal Procedure so as to call for an exercise of this Court's power of supervision.

The District Court determined that Gurino did not present any fair or just reason for withdrawing the plea which is the appropriate standard when the motion precedes sentencing. However, the District Court failed to analyze whether Gurino's motion to dismiss the indictment for failure to charge an offense refiled concurrently with the motion to withdraw guilty plea constituted a fair and just reason for granting the motion.

Prior to the per curiam affirmation of Gurino's conviction and sentence, the Eleventh Circuit decided United States v. Bell, 22 F.3d 274 (11th Cir. 1994). The panel in Bell considered the identical situation later presented to the Eleventh Circuit by Gurino, as both Bell and Gurino moved to withdraw guilty pleas while attacking the indictment for failure to charge an offense. Id. at 275.

The Bell panel stated:

> Because the district court denied the motion to dismiss, thereby rejecting Bell's argument that certain counts of the indictment fail to state an offense, it never reached the question of whether the defective indictment constituted a "fair and just reason" for withdrawal of the guilty plea. We find that Bell's argument that several counts of the indictment fail to charge an offense, if meritorious, constitutes a "fair and just reason" for withdrawal of his guilty plea.

Id. at 275-76. In affirming Gurino's conviction and sentence without opinion, the Eleventh Circuit contradicted the binding precedent of Bell. See United States v. Hogan, 986 F.2d 1364, 1369 (11th Cir. 1993) ("it is the firmly established rule of this Circuit that each succeeding panel is bound by the holding of the first panel to address an issue of law, unless and until that holding is overruled en banc, or by the Supreme Court.") (example omitted). Thus, the Eleventh Circuit so departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervision power, pursuant to Rule 10.1(a), by affirming Gurino's conviction without opinion in contravention of its earlier decision. Accordingly, Gurino petitions this Court to announce definitively that a meritorious challenge to an indictment for failure to charge an offense constitutes a "fair and just reason" to withdraw a guilty plea before sentencing. This is an important question regarding the defendant's Sixth Amendment Constitutional right to trial on which this Court's supervision is required.

V. The Government was not entitled to enhance the sentence for the amount laundered when the underlying specified unlawful activity involved no monetary loss.

The District Court imposed a two point increase to the offense level in calculating the sentence under the United States Sentencing Guidelines ("USSG"), based upon a finding that the amount laundered was between $200,000 and $350,000, which the Eleventh Circuit affirmed without opinion. The Government bears the burden of proof as to the amount laundered by the preponderance of the evidence. United States v. De La Rosa, 922 F.2d 675, 679 (11th Cir. 1991). The amount laundered must be related to the amount of loss from the specified unlawful activity of mail fraud. See USSG § 2S1.1 Application Note 1 (amended May 10, 1995) (if defendant establishes loss from fraud is less than amount involved in the transaction, loss from fraud shall be used as "value of the funds.")[6]

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[6] The Amended Application Notes, although not yet reviewed by Congress, are binding on the courts where the amendment clarifies the previous Guideline. Stinson v. United States, _____ U.S. _____, 113 S.Ct. 1913, 1919 (1993).

No financial loss was established by the Government. The Presentence Investigation Report acknowledges that the contracts were performed satisfactorily and that no Government agency sustained a financial loss, which the District Court adopted at sentencing. In fact, as bonded low bidders on contracts which were performed satisfactorily, "chances are the government would have gained, not lost, by dealing with [defendants]." United States v. Schneider, 930 F.2d 555, 558 (7th Cir. 1981).

The Eleventh Circuit's affirmation of the sentence in this case contradicts the opinion of the Seventh Circuit in Schneider, wherein the court vacated the sentences which were increased for amount of loss, on convictions for fraudulently obtaining government contracts. In remanding the case for resentencing without the increase for amount of loss, the Seventh Circuit stated:

> The other type of fraud is committed in order to obtain a contract that the defendant might otherwise not obtain, but he means to perform the contract (and is able to do so) and to pocket, as the profit from the fraud, only the difference between the contract price and his costs. This is such a case.

Id. at 558. The prosecution of Gurino is also such a case, and the Eleventh Circuit's decision contradicts that of the Seventh Circuit.

The Eleventh Circuit's affirmation of the sentence also contradicts the court's prior decision in De La Rosa, 922 F.2d at 679, and the Second Circuit's decision in United States v. Lee, 818 F.2d 1052, 1057 (2d Cir. 1987), which require the government to prove enhancements for the amount laundered by a preponderance of the evidence. The only evidence presented at sentencing was by Gurino, establishing that the maximum amount which could be attributed to funds from NYCHA is $90,900.00, for which amount the sentencing adjustment is zero. The Government submitted no evidence, other than the allegations in the indictment; therefore, the preponderance of the evidence could not establish an amount in excess of $200,000.00 as permitted by the Eleventh Circuit.

Accordingly, Gurino petitions this Court to address this conflict between the Circuits, and to clarify the application of the increase in offense levels under the USSG for the amount of loss.

VI. The increase to the offense level for obstruction of justice contradicts this Court's decision in United States v. Dunnigan, as there has been no finding of a misstatement which is material or that significantly obstructed or impeded prosecution of the offense.

The Eleventh Circuit affirmed without opinion the sentence imposed by the District Court, including a two point upward adjustment under the USSG for obstruction of justice, based upon the District Court's finding that Gurino was "lying" and therefore committed perjury at the Fed.R.Crim.P. 11 guilty plea colloquy when he told the Court the plea was entered freely and voluntarily, which directly contradicts this Court's opinion in United States v. Dunnigan, _____ U.S. ______, 113 S.Ct. 1111 (1993).

In Dunnigan, this Court held that a District Court must make a finding that encompasses all of the factual predicates for perjury in order to adjust upwards the sentencing level for obstruction of justice. Id. at 1117. The District Court's finding that Gurino was "lying" fails to explain how the statements significantly obstructed or impeded prosection of the offense, as required for increase based upon an obstruction of justice. United States v. Alpert, 28 F.3d 1104, 1107 (11th Cir. 1994). Also, the District Court failed to explain the materiality of the perjurious testimony, which the Sixth Circuit has held is required by this Court's opinion in Dunnigan. United States v. Spears, 49 F.3d 1136, 1143 (6th Cir. 1995).

In fact, the District Court expressly found that the plea was entered freely and voluntarily, in rejecting the motion to withdraw guilty plea. As the plea was not withdrawn, the allegedly perjurious statements could not be material. Furthermore, the only impediment caused was the need to hold a hearing on the motion to withdraw guilty plea, which is not an impediment but rather a defendant's right to file under the Federal Rules of Criminal Procedure and the Sixth Amendment to the United States Constitution. Without a specific explanation of the materiality and impediment caused by the statements, every attempt to withdraw a guilty plea under Rule 32 would result in an increased sentence,[7] which this Court cautioned against in Dunnigan, 113 S.Ct. at 1115 (quoting United States v. Grayson, 438 U.S. 41, 55 (1978)).

By affirming without opinion the sentence imposed by the District Court, the Eleventh Circuit has sanctioned the District Court's departure from the decisions of this Court, the Sixth Circuit and the binding precedent of the Eleventh Circuit, thereby requiring this Court to exercise its power of supervision and issue a writ of certiorari to the

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[7] In Gurino's sentencing, the motion to withdraw guilty plea resulted in a five-point increase to the offense level; in addition to adjusting the level upwards two points for obstruction of justice, the Revised Presentence Investigation Report used in sentencing deleted the three-point downward adjustment for acceptance of responsibility accorded Gurino in the earlier Report prepared prior to the motion to withdraw plea and specifically promised by the Government in exchange for Gurino's plea. As with the obstruction of justice increase, the deletion of the downward adjustment was based solely on Gurino's unsuccessful attempt to withdraw the guilty plea. This five-point increase in offense level resulted in an additional 40 months in sentencing (increase from 57 months to 97 months).

Eleventh Circuit on the important issue of calculating the duration of incarceration for person convicted in the federal courts.

VII. The amendments to the Sentencing Guidelines should be applied retroactively to effect the correction to the guidelines for money laundering as articulated by the Commission; alternatively, the Guidelines should not apply to the sentence, which is atypical of money laundering cases decided before the amendment.

The Eleventh Circuit's affirmation of the sentence contravenes the United States Sentencing Commission's ("USSC") Amendments to the USSG filed before Congress on May 10, 1995, which, in relevant part, revise § § 2S1.1 and 2S1.2, which determine the calculation of the base offense level for money laundering sentencing ("Amendment 18"). Amendment 18 relates the money laundering offense level to the offense level for the underlying specified unlawful activity from which the laundered funds were derived, in this case fraud and deceit.

Although the District Court did not have the benefit of Amendment 18, the amended guidelines may be applied retroactively. See Braxton v. United States, 500 U.S. 344, 348 (1991). In Braxton, this Court recognized that amendments to the guidelines may be applied retroactively, although the Court declined to resolve the issue as the case could be decided on other grounds. Id. at 348-49.

Generally, retroactivity is determined by the USSC pursuant to 28 U.S.C. §994(u) and implemented at USSG §1B1.10. Braxton, 500 U.S. at 348. However, the USSC has yet to announce whether Amendment 18 will be applied retroactively, and therefore this issue is ripe for this Court's review. While the Courts have not determined whether an amendment to the guidelines which provides for a more lenient sentence can be applied retroactively, eight Circuits have announced that an amendment to the guidelines cannot be applied retroactively if the amendment provides for a stricter sentence, due to the ex post facto clause. See United States v. Saucedo, 950 F.2d 1508, 1515 n.12 (10th Cir. 1991) (collecting cases from First, Third, Fourth, Fifth, Eight, Eleventh and D.C. Circuits). This rationale would not prohibit retroactive application of an amended guideline which provides for a more lenient sentence, however.

Retroactive application of Amendment 18 would not violate the ex post facto clause,[8] and therefore is consistent with the decisions of the eight Circuits which have addressed the issue, as set forth in

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[8] Applying Amendment 18 to Gurino reduces the base offense level from 20 to 8, and precludes the increase for amount of loss (under § 2F1.1 Application Note 7(b)), thereby permitting a maximum sentence of 21 months (if the other enhancements are deemed proper), 76 months less than the sentence imposed.

Saucedo, supra. Moreover, retroactive application of Amendment 18 would further the reason for the amendment, as announced by the USSC:

> the Commission has found that §§2S1.1 and 2S1.2 do not adequately distinguish the varying degrees of offense conduct that are sentenced under these guidelines. This amendment responds to concerns about the operation of these guidelines by tying the base offense levels of the revised guideline more closely to the underlying conduct that was the source of the illegal proceeds....This approach is consistent with the current guideline structure, which generally treats such offenses [e.g., drug trafficking offenses] at least four levels more serious than typical economic offenses (e.g., fraud).

Amendment 18, Reason for Amendment.

As this Court recognized in Braxton, Congress specifically authorized the USSC to revise the guidelines as necessary. Braxton, 500 U.S. at 348. As Amendment 18 has no negative effect on Gurino, its retroactive application presents no ex post facto issue, and is consistent with Congressional intent as embodied in 28 U.S.C. § 994(o), and with this Court's decision in Braxton, supra. As the USSC has not determined the retroactivity of Amendment 18, Gurino requests this Court resolve the issue of retroactivity of Amendment 18 to USSG, which the Eleventh Circuit rejected without opinion.

Even were Amendment 18 not applied retroactively, the Reason for Amendment stated by the USSC demonstrates that the offense for which Gurino was sentenced falls without the "heartland" of cases for which the applicable guidelines were designed. See USSG Ch. 1, Pt. A., intro. comment 4(b) (Nov. 1, 1992).

The USSC needed to amend § § 2S1.1 and 2S1.2 to adequately distinguish the varying degrees of offense conduct that are sentenced under these guidelines, because the USSC originally promulgated these guidelines with little case experience upon which to base the guidelines. Accordingly, the USSC having more case experience upon which to review the guidelines, has determined to tie the base offense levels of the revised guideline more closely to the underlying conduct that was the source of illegal proceeds. This which approach is consistent with the current guideline structure which generally treats serious offenses such as a drug trafficking at least four levels higher than typical economic offenses such as fraud, which is the specified unlawful activity in Gurino's money laundering conviction. Amendment 18, Reasons for Amendment.

Because Gurino's offense does not fall within the heartland of cases as established by the USSC's Commentary, Gurino should be sentenced under the guideline which most closely approximates the offense conduct alleged in the indictment. *See* *United States v. Le Blanc*, 825 F.Supp. 422, 423-24 (D.Mass. 1993). In this case, the indictment most closely alleges a violation of 18 U.S.C. § 1012, false statement to HUD. *See* pages 10-11, *supra*. As § 1012 provides for a maximum sentence of twelve months, the 97 month sentence of Gurino should be vacated, and accordingly Gurino petitions this Court for a writ of certiorari to the Eleventh Circuit.

CONCLUSION

For the reasons stated above, and to eliminate the split in the Circuits, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX

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FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT
JULY 27, 1995, MIGUEL J. CORTEZ, CLERK

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 93-2733

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTHONY J. GURINO,

Defendant-Appellant.

- -

On Appeal from the United States District Court for the Northern District of Florida

- -

ON PETITION(S) FOR REHEARING AND SUGGESTIONS(S) OF REHEARING EN BANC

Before: TJOFLAT, Chief Judge, ANDERSON, Circuit Judge, and Fay, Senior Circuit Judge.

PER CURIAM:

(X) The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) on Rehearing En Banc are DENIED.

(   ) The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rule of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc is DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/S/ R. Lanier Anderson, III
UNITED STATES CIRCUIT JUDGE

FILED U.S. Court of Appeals Eleventh Circuit
May 15, 1995 MIGUEL J. CORTEZ, CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-2733

D.C. Docket No. GCR 92-01007

UNITED STATES OF AMERICA

Plaintiff-Appellee,

versus,

ANTHONY J. GURINO,

Defendant-Appellant,

Appeal from the United States District Court
for the Northern District of Florida

(May 15, 1995)

Before TJOFLAT, Chief Judge, ANDERSON Circuit Judge, and FAY, Senior Circuit Judge.

PER CURIAM:

AFFIRMED. See 11TH Cir. R. 36-1.[1]

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[1] 11th Cir. R. 36-1 provides:
When the court determines that any of the following circumstances exist:
(a) judgment of the district court is based on findings of fact that are not clearly erroneous;
(b) the evidence in support of a jury verdict is sufficient;
(c) the order of an administrative agency is supported by substantial evidence on the record as a whole;
(d) summary judgment, directed verdict, or judgment on the pleadings is

FILED U.S. DISTRICT COURT, NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE, FLORIDA, JUNE 23, 1993

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, GAINESVILLE DIVISION

UNITED STATE OF AMERICA

v. Case Number GCR 92-01007-001

ANTHONY J. GURINO
Defendant.

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

The defendant, **ANTHONY J. GURINO**, was represented by **Atlee W. Wampler, III, Miami, FL.**

On motion of the United States the court has dismissed count(s) **2-9 and 11-21.**

The defendant pleaded guilty to count(s) **One and Ten.** Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

TITLE & SECTION	NATURE OF THE OFFENSE	DATE CONCLUDED	COUNT NUMBER
18 USC 371	Conspiracy	2/12/92	One
18 USC 1956(a)(1) (B)(i)	Money Laundering	5/29/91	Ten

As pronounced on **June 11, 1993,** the defendant is sentenced

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supported by the record;

as provided in pages 2 through **5** of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of **$100.00**, for count)s) **One and Ten**, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this 23rd day of June, 1993.

/s/ Maurice M. Paul
Chief United States District Judge

Defendant's SSAN 081-34-9080
Defendant's Date of Birth: 05/07/43
Defendant's address: 185-08 80th Drive,
Jamaica Estates, New York 11432

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **60** months as to Count One and **97** months as to Count Ten, said terms of imprisonment to run concurrent with each other, and consecutive to the federal commitment sentence presently being served.

The defendant is remanded to the custody of the United States Marshal.

RETURN:

I have executed this Judgment as follows:

____
____
____
____

Defendant delivered:
on ____________________ to ____________________
at ____________________, with a certified copy of this Judgement.

____
United States Marshal

By________________________
Deputy Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **three (3)** years as to Count One and **three (3) years** as to Count Ten, said terms to run concurrent.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If ordered to the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.

3. The defendant shall not own or possess a firearm or destructive device.

4. The defendant shall provide the Probation Office access to any requested financial information.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
4) The defendant shall support his or her dependents and meet other family responsibilities.
5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

FINE

The defendant shall pay a fine of **$19,012.40, consisting of a fine of $12,500.00 and an additional fine of $6,512.40 for costs of supervision.**

The fine is the total of the fines imposed on individual counts.

The court has determined that the defendant does not have the ability to pay interest. It is ordered that the interest requirement is waived.

The fine shall be paid in full immediately.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

STATEMENT OF REASONS

The court adopts the factual findings and guideline in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	**26**
Criminal History Category:	**III**
Imprisonment Range:	**78 months to 97 months**
Supervised Release Range:	**2 to 3 years**
Fine Range:	**$12,500.00 to $125,000.00**
Restitution:	**$NA**

The sentence of 60 months as to Count One, which is less than the minimum of the applicable guideline range, is imposed because it is the statutorily authorized maximum sentence for the offense of conviction. The sentence as to Count Ten is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines. The sentence of 97 months as to Count Ten is justified by the facts of the case and the amount of money involved in the offense. The sentence is sufficient to provide just punishment.

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA,

v. CASE NO. GCR-92-01007-MMP

ANTHONY J. GURINO

Defendant.
_____________________________/

ORDER

This cause is before the Court for the sentencing of defendant Anthony Gurino. Atlee Wampler, attorney for this defendant, requested that this Court rule on an outstanding motion to dismiss prior to sentencing, and suggested that this outstanding motion may constitute legal cause for this sentencing to not proceed.

In pleading guilty, defendant Gurino waived all non-jurisdictional defenses to the charge, and admitted his guilt. See McCoy v. Wainwright, 804 F.2d 1196, 1198 (11th Cir. 1986). Accordingly, defendant's motion to dismiss is DENIED.

DONE AND ORDERED this 11th day of June, 1993.

/s/MAURICE M. PAUL

ENTERED ON DOCKET 6-15-93 at CRC
Rules 58 & 79(a) FRCP or 32(b)(1) & 55 FRCRP)
Copies mailed to Wampler, Burrow,
Smith, Sanford

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA,

v. CASE NO. GRC 92-01007-MMP

ANTHONY J. GURINO

Defendant.
_______________________________/

ORDER

This cause is before the Court on defendant Anthony Gurino's Motion to Withdraw Guilty Plea, doc. 170, to which the Government has filed a Response, doc. 192. An evidentiary hearing on this motion was held May 27-28, 1993, in Gainesville, Florida. Closing arguments were heard June 4, 1993. With the foregoing as authority, defendant Gurino's Motion to Withdraw Guilty Plea, doc. 170, is DENIED.

FACTS

On February 12, 1992, a grand jury handed down a twenty-one count Indictment which named as defendants Anthony Gurino, Barbara Ann Pace Gurino, Louis Gurino, Vincent Gurino, Vincent Sorena, Patrick Borello, and Augusto Aufiero. In late October 1992, plea negotiations with the Gurino defendants commenced. In January 1993, plea negotiations with the other three defendants commenced.[1]

On February 8, 1993, plea agreements for defendants Aufiero, doc. 149, Borello, doc. 150, and Sorena, doc. 151, were filed with this Court, along with the Information to which they were to plead, doc. 148. The disposition of this case as to these three defendants is now in the hands of the United States District Court for the Eastern District of New York, as they have consented to a transfer of venue pursuant to Rule 20, Federal Rules of Criminal Procedure.

On February 8, 1993, the Government filed a Motion to Dismiss the Indictment as to defendant Louis Gurino. Doc. 147. On February 19, 1993, defendants Anthony and Barbara Ann Pace Gurino each entered pleas of guilty, Anthony to two counts of the Indictment in this cause, and Barbara to a one count Information.[2] Sentencing for defendants Anthony and Barbara Ann Pace Gurino was set for April 16, 1993. See docs. 162 & 163.

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[1] The Government sets forth the chronology of plea negotiations in detail in its Response to defendant Gurino's Motion. See doc. 192 at 3-5.

On April 14, 1993, defendant Anthony Gurino filed with this Court numerous motions; Motion for Appearance Pro Hac Vice by Atlee Wampler, doc. 166; Notice of Pro Hac Vice Appearance, doc. 167; Motion and Memorandum for Leave to Withdraw and Substitution of Counsel, doc. 168; Motion to Continue Sentencing, doc. 169; Motion to Withdraw Guilty Plea, doc. 170; Motion to Dismiss Indictment, doc. 171; Notice of Filing Affidavit and Exhibits, doc. 175; Affidavit in Support of Motion to Withdraw, doc. 176; Affidavit in Support of Substitution of Counsel, doc. 177.

This Court determined that Mr. Shargel, original counsel for defendant Anthony Gurino, had been terminated from his representation of this defendant, and granted his motion for leave to withdraw. See doc. 182 at 2. This Court found the application of Mr. Wampler to appear pro hac vice to be in proper form, but, pursuant to a Suggestion of Conflict filed by the Government, doc. 178, disqualified him as counsel for defendant Anthony Gurino, doc. 182 at 1-2.

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[2] The information was filed in open court, doc. 158, pursuant to a written waiver of indictment, doc. 157.

Because this defendant was not represented as of those rulings, and had outstanding a motion to withdraw his plea, his sentencing was continued, and an evidentiary hearing on the motion to withdraw scheduled. See id. at 2-3. Sentencing for defendant Barbara Ann Pace Gurino was also continued. Id. at 3.

DISCUSSION

This Court is faced with two concerns: first, whether the original plea entered into by defendant Anthony Gurino[3] is valid; second, if the plea is valid, whether defendant Gurino should be allowed to withdraw the plea. Each question will be addressed in turn.

(1) The Validity of the Original Plea

Rule 11, Federal Rules of Criminal Procedure, is the yardstick by which the validity of a guilty plea is measured. A plea that does not satisfy the "core concerns" of Rule 11 must be stricken as invalid. United States v. Stitzer, 785 F.2d 1506, 1513 (11th Cir.), cert. denied, 107 S. Ct. 93 (1986).

> The three core concerns of Rule 11 are: (1) the guilty plea must be free from coercion; (2) the defendant must understand the nature of the charges; and (3) the defendant must know the consequences of his plea.

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[3] Unless otherwise noted, any reference in this Order to defendant Gurino is a reference to Anthony Gurino. Barbara Ann Pace and Louis Gurino shall be referred to by their full names in this text.

Id. at 1513 n.2 (citing United States v. Dayton, 604 F.2d 931, 935 (5th Cir. 1979) (en banc), cert. denied, 100 S. Ct. 1080 (1980)).

The twenty-eight page transcript of the plea proceeding involving this defendant fully supports a finding that this plea is valid. See doc. 183 at 2-29.

As to the first factor, this Court expressly inquired of defendant Gurino as to whether this plea was the result of any coercion, hidden promise, threat, or intimidation. Id. at 25-28. Defendant answered in the negative on all occasions. The plea, then, is facially without coercion, and at least presumptively valid.

Secondly, this Court explained to defendant Gurino the nature of the charges against him, the elements as to which the Government would have to offer proof beyond a reasonable doubt, and had Assistant United States Attorney R. Jerome Sanford read the statement of facts in open court so that this defendant would have the chance to voice any objection. Id. at 10-18. He voiced none. Id. at 18. This Court then explained the maximum penalties to which this defendant would be exposed, and the process by which he would be sentenced. Id. at 18-20. Again, defendant Gurino replied that he understood. This defendant was aware of the nature of the charges against him.

Finally, this Court fully advised this defendant of the consequences of his plea. Id. at 8-10. The written plea agreement was identified by defendant Gurino, and its terms explained to him. Id. at 20-25. The third factor, as the first two, was fully satisfied.

This plea of guilty is valid.

(2) The Motion to Withdraw the Plea

Whereas Rule 11 governs the validity of a guilty plea, Rule 32 governs withdrawal of a presumptively valid plea.

> If a motion for withdrawal of a plea of guilty is made before sentence is imposed, the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason.

Fed. R. Crim. P. 32(d).

Defendant Gurino filed his motion to withdraw guilty plea April 14, 1993, two days before his scheduled sentencing. This Court must determine whether any fair and just reason sufficient to allow this withdrawal exists.

> To help us make this determination, we consider the three factors which the former Fifth Circuit articulated in United States v. Pressley, 602 F.2d 709, 711 (5th Cir. 1979), (1) whether close assistance of counsel was available; (2) whether the original plea was knowing and voluntary; and (3) whether judicial resources would be

conserved.

Stitzer, 785 F.2d at 1514.

These factors will be addressed in turn.

(a) Close Assistance of Counsel

Defendant Gurino contends that his counsel, Gerald Shargel, rendered him ineffective assistance during plea negotiations. As an initial and quite persuasive observation, this Court must note that this contention is in direct contradiction to the sworn representations made by this defendant at his plea. Defendant Gurino swore that his attorney had reviewed the plea agreement with him, had made no promises in addition to or in conflict with the agreement, and had at all times rendered satisfactory representation. Doc. 183 at 25-27. When the trial court adheres strictly to the mandates of Rule 11, a defendant's subsequent contentions of false swearing may be rejected. United States v. Barrett, 514 F.2d 1241, 1243 (5th Cir. 1975) (cited with approval in Stitzer, 785 F.2d at 1514 n. 4).

Mr. Shargel is a competent criminal defense attorney with vast experience. He spent a considerable amount of time with defendant Gurino as part of the processes involved in this case. These factors undermine allegations of ineffective representation.

Moreover, defendant Gurino received the benefits of counseling from Ms. Victoria Toensing, a criminal defense attorney formerly a Deputy Assistant Attorney General of the Criminal Division at the United States Department of Justice, who was called in for the sole purpose of aiding in plea negotiations. Mr. Nick Gravante, attorney of record for defendant Barbara Ann Pace Gurino, and Mr. Atlee Wampler, attorney of record for defendant Louis Gurino, were also party to these plea negotiations, and also conferred with defendant Anthony Gurino.

Given the resources employed by him, defendant Gurino's current protestations of ineffective assistance are quite suspect. The plea agreement he signed was the result of lengthy, intense negotiations. He signed the agreement, and did not protest its provisions in the eleven days between his signature and the plea in open court. He did not express any disagreement or discontent with the agreement when asked to do so under oath in open court. It was not until two days before his sentencing that defendant Gurino made known to this Court his dissatisfaction with the agreement and his representation.

Defendant Gurino alleges several particular areas in which his representation was allegedly deficient. As set forth above, the big picture reveals that the details alleged by defendant Gurino are suspect, and not credible. The particulars raised by this defendant, though, will be addressed.

Defendant first asserts that counsel advised him that even after a plea, he could challenge the sufficiency of the indictment. As pointed out above, a defendant's statements under oath at the Rule 11 plea colloquy makes quite difficult a later challenge based on allegations of false swearing. See Stitzer, 785 F.2d at 1514 n.4; United States v. Nuckols, 606 F.2d 566, 569 (5th Cir. 1979) (prior attestations of voluntariness impose a "heavy burden" on a later effort to contradict the same).[4] Defendant Gurino's sworn statements as to this allegation could not be more clear.

> THE COURT: Also, if your guilty plea is accepted by this Court, Mr. Gurino, you waive, that is, you give up your right to appeal all matters relating to the judgment and the sentence to be imposed, as well as the issue of your guilt or innocence.
>
> So knowing that you are giving up your right to appeal by pleading guilty, except as to an illegally-imposed sentence or the failure of this Court to properly

---

[4] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the court adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.

> apply the Sentencing Guidelines, do you still wish to plead guilty.
>
> THE DEFENDANT: Yes.

Doc. 183 at 9-10.

Moreover, at the hearing on the motion to withdraw guilty plea, it was affirmatively established that Mr. Shargel advised the defendant that if the facts of the plea did not legally constitute a crime, that he could attack the plea itself by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255. This advice was sound, and does not support a claim of ineffective assistance sufficient to support this motion to withdraw.

Defendant also asserts that he at all times maintained his innocence, and pleaded guilty only after Mr. Shargel advised him that this Court would not accept an Alford plea.[5] The Court never advised Mr. Shargel that it would not accept an Alford plea. His representations to his client to the contrary, if they occurred, were based on his own false beliefs, and not on policy of this Court. Additionally, the difference between a plea wherein guilt is admitted, and one where it is not, is hardly the type of difference that is sufficient to support a motion to withdraw the plea. In both cases, the defendant would be adjudicated guilty of the counts to which he pleaded, and sentenced on that adjudication.

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[5] In North Carolina v. Alford, the Supreme Court held that a trial court may accept a plea equivalent to one of guilt even where the defendant maintains his or her innocence. 91 S. Ct. 160 (1970)

Once again, this Court must emphasize that defendant Gurino's current statements that he constantly maintained his innocence are not borne out by the record.

> THE COURT: A plea of guilty, Mr. Gurino, admits the truth of the charge or charges brought against you, while of plea of not guilty denies the truth of that charge.
>
> Do you understand the difference between a guilty and a not guilty plea?
>
> THE DEFENDANT: Yes.

Doc. 183 at 9.

Defendant Gurino's current allegations of ineffective assistance of counsel are without support in the record, and were not borne out at the evidentiary hearing.

Defendant Gurino received effective assistance of counsel.

(2) The Plea was not Knowing and Voluntary

In analyzing this second factor governing a defendant's motion to withdraw a plea, a court is to place considerable emphasis on its adherence to the dictates of Rule 11. Stitzer, 785 F.2d at 1514 and n.

4 ("[T]he trial court satisfied Rule 11's requirement of ensuring that appellant's plea was knowing and voluntary....We give considerable weight to this factor."). As set forth above in great detail, this Court satisfied Rule 11's dictates, and insured that defendant Gurino's plea was knowing and voluntary.

Defendant raises one argument not raised and disposed of above in this context. He argues that he was under improper pressure to plead guilty in order to protect his wife and son from a bad faith prosecution. This allegation is wholly without merit.

The allegations with respect to defendant Louis Gurino are baseless in fact. The Government has represented, and there is no sufficient evidence to contradict the assertion, that the charges against defendant Louis Gurino were to be dropped no matter what the outcome of the remainder of the case was. Doc. 192 at 11 n.3. Contrary to the position of defendant Gurino, then, his son was in no way a "bargaining chip" in these negotiations.

The facts as to defendant Barbara Ann Pace Gurino are somewhat different. The Government did not promise to drop the charges against her regardless of the outcome of the remainder of the case. The Government was prepared to proceed to trial against her on the charges in the indictment. The opportunity for Barbara Gurino to plead to a lesser charge, outside of the indictment, was at all times part and parcel of the negotiations with defendant Gurino; that is, it was a "package deal" and was non-negotiable by the Government, as was the condition that the Lou-Roe farm must be forfeited if any plea was to be accepted. The defendant fully understood these terms.

The fact that a defendant chooses to plead guilty in order to protect his wife from prosecution does not necessarily undermine the voluntariness of the plea. LoConte v. Dugger, 847 F.2d 745, 752 (11th Cir. 1988). Where a defendant seeks to withdraw a plea based on allegations that, contrary to his own sworn testimony at the Rule 11 colloquy, the guilty plea was involuntary because it was induced by threats to prosecute a family member, that defendant must meet the heavy burden of showing that the Government did not observe a high standard of probable cause to believe that the family member actually committed a crime. Martin v. Kemp, 760 F.2d 1244, 1248 (11th Cir. 1985) (citing United States v. Nuckols, 606 F.2d 566, 569 (5th Cir. 1979).

Defendant Gurino cannot meet his heavy burden. Defendants Barbara Ann Pace and Louis Gurino are both named in the indictment in this case. The indictment itself is telling proof of probable cause, and good faith. See Politte v. United States, 852 F.2d 924, 929 (7th Cir. 1988).

The defendant's contention that the indictment itself was obtained in bad faith is belied by the facts in this case. The money that was allegedly being laundered was passing through corporations held in whole or in part by Barbara Ann Pace Gurino, and was being used to build a farm occupied and operated by Louis Gurino. To seek an indictment against these persons as well as the person who was allegedly directly responsible for obtaining the "dirty" money which needed laundering is not bad faith. The facts testified to at the hearing on the motion to withdraw the guilty plea affirmatively established good faith on the part of the prosecutor and probable cause to believe that Barbara Ann Pace Gurino committed the crimes charged.

As testified to at the hearing, Mr. Shargel, attorney for the defendant , did not share the optimism of the prosecutor as it related to Barbara Ann Pace Gurino. Mr. Shargel, in fact, told Anthony Gurino not to accept the plea, but to go to trial, and that, in his opinion, the case against Barbara would not survive a motion made pursuant to

Rule 29, Federal Rules of Criminal Procedure.[6] The fact that Anthony Gurino pleaded guilty in light of this advice indicates that the plea was knowing and voluntary; that is, knowing that his attorney believed that the case against his wife would fall after the Government's case-in-chief, Anthony Gurino voluntarily entered his plea of guilty.

Defendant Gurino's plea was knowing and voluntary.

(3) Conservation of Judicial Resources.

The final factor to be weighed is the conservation of judicial resources. A guilty plea before trial necessarily conserves resources. A Rule 11 colloquy is far less expensive than a full-blown trial. In this case, this fact rings especially true.

More, however, is at issue in this case. The Government was prepared to go to trial when, on the eve of that trial, this case was disposed of with plea agreements. The withdrawal of this plea, then, would not only entail the normal cost of trial preparation, but would also include the costs of the Government dismantling its case this past February, and re-assembling it at some time in the future. This waste of resources counsels against granting this motion.

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[6] "The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal on one or more of the offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses." Fed. R. Crim. P. 29(a).

CONCLUSION[7]

In a letter dated March 5, 1993, from defendant Gurino to Mr. Shargel, defendant provides, among others, [8] the following reasons for wishing to withdraw from his plea:

> 4) I cannot live up to the plea agreement because I cannot get Louie to give up the farm.
>
> 5) Guidelines are too broad as to the time I must serve.

Doc. 176 exh. 1.

These reasons do not support a motion to withdraw plea, and undermine defendant's credibility as it goes to his assertions of other reasons for wishing to withdraw from this plea. The guidelines were established by Congress, and any complaints as to the length of a sentence imposed thereunder must be directed to Washington, D.C.

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[7] Defendant argues that he has a meritorious defense, and that this fact weighs in favor of granting this motion to withdraw. A district court must decide the issue of whether a plea should be withdrawn without examining the merits of any asserted defense. United States v. Schubert, 728 F.2d 1364, 1366 (11th Cir. 1984).

[8] The other reasons provided include preserving the right to appeal, the right to challenge the amount of money that was laundered, and the ability to better live with a conviction than a plea. Defendant expressly surrendered his right to appeal without any protest at the Rule 11 colloquy, and stipulated to the amount of money he laundered. The other reasons, a feeling of uneasiness with a plea, is not in itself sufficient to support a motion to withdraw this plea.

sentence imposed thereunder must be directed to Washington, D.C. Forfeiture of the farm was part of the plea agreement. If defendant Gurino's son will not surrender the farm, his father will be in breach of his plea agreement, and, at the discretion of the Government, may lose the benefits he gained as part of that agreement. This dispute as to the farm does not weight in favor of withdrawal of this plea.

Lastly, the defendant, Anthony Gurino, told the Court during the hearing on the motion to withdraw plea that in spite of his repeated assurances to this Court at the time of taking the plea (1) that it was in fact freely and voluntarily entered into, (2) that the facts as they appear in the record were true and correct, and (3) that no force, pressure, coercion, or intimidation of any type was exerted upon his from any source to enter into the plea, he was lying to the court when he made all of these representations and assurances. The record establishes beyond a reasonable doubt that (1) the plea of guilty was freely and voluntarily entered into by the defendant; (2) there was a legally sufficient factual basis to support that plea; (3) the plea was not the product of any threat, force, pressure, intimidation, or coercion of any type; and (4) the defendant had the assistance of qualified, competent, and effective counsel.

(1) Defendant Anthony Gurino's Motion to Withdraw Guilty Plea, doc. 170, is DENIED.

(2) Sentencing for defendant Gurino is hereby SCHEDULED for June 11, 1993, at 1:00 p.m.

(3) Sentencing for defendant Barbara Ann Pace Gurino is hereby SCHEDULED for June 11, 1993, at 1:30 p.m.

(4) The parties are advised that at the time of sentencing, this Court will consider an upward departure from the offense level of twenty-one as set forth in the pre-sentence report in the following particulars:[9]

(a) disallowing the three level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1; and

(b) increasing the offense level by two for obstruction of justice under U.S.S.C. § 3C1.1.

DONE AND ORDERED this 4th day of June, 1993.

/s/ MAURICE M. PAUL

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[9] This notice is given in compliance with Burns v. United States, 111 S. Ct. 2182, 2187 (1991) ("[B]efore a district court can depart upward on a ground either in the presentence report or in a prehearing submission by the Government, Rule 32 requires that the district court give the parties reasonable notice that it is contemplating such a ruling. This notice must specifically identify the ground on which the district court is contemplating an upward departure." (note omitted)).

/s/ MAURICE M. PAUL

MAURICE M. PAUL, CHIEF JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA GAINESVILLE DIVISION

UNITED STATES OF AMERICA)
)
vs.) PRESENTENCE
) INVESTIGATION
Anthony J. GURINO) REPORT
Docket No. GCR92-01007-001

Prepared For: Honorable Maurice M. Paul
Chief United States District Judge

Prepared By: Karen M. Gilliam
United States Probation Officer
Gainesville, Florida
(904) 377-2086

Assistant U.S. Attorney
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(904) 378-0996

Defense Counsel
Atlee W. Wampler, III
777 Brickell Avenue, Suite 900
Miami, FL 33131
(305) 577-0044

Sentence Date: June 11, 1993

Offense: Count One: Conspiracy (Money Laundering), in violation of 18 U.S.C. § 371, a Class D. Felony.
Penalty: 5 years/$250,000.00 fine.
Count Ten: Money Laundering, in violation of 18 U.S.C. § 1956(a)(1)(B)(i), a Class C Felony.
Penalty: 20 years/$500,000.00 fine or twice the value of the property involved in the transaction.

Release Status: Defendant is serving a federal commitment sentence imposed in the Eastern District of New York.

Detainers:	None.
Codefendants:	
Related Cases:	None.
Date Report Prepared:	March 15, 1993
Date Report Revised:	June 7, 1993

Identifying Data:

Date of Birth:	05/07/43
Age:	49
Race:	White
Sex:	Male
SSN No.:	081-34-9080
FBI No:	669653E
USM No:	21593-053
Other ID No:	N/A
Education:	General Equivalency Diploma
Dependents:	Two
Citizenship:	United States
Legal Address:	185-07 80th Drive Jamaica Estates, New York 11432
Aliases:	None

Optional Photograph

PART A. THE OFFENSE

Charge(s) and Conviction(s)

1. Anthony Gurino is named in twenty-one counts of a twenty-one court Indictment handed down in the Northern District of Florida on February 12, 1992. Count One of the Indictment charges that from a date unknown but commencing at least as early as June, 1989, and continuing up to an including the date of the filing of this Indictment, Anthony J. Gurino, Louis Gurino, Barbara Ann Pace Gurino, Vincent Sorena, Patrick Borello, and Augusto Aufiero, did conspire to conduct financial transactions which involved the proceeds of a specified unlawful activity, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of this specified unlawful activity, in violation of 18 U.S.C. § 371. Counts Two through Twenty-One of the Indictment charge that between February 17, 1990 and May 29, 1991, the aforementioned defendants did conduct and attempt to conduct financial transactions which involved the process of a specified unlawful activity knowing that the transactions were designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of this specified unlawful activity, in violation of 18 U.S.C. § 1956(a)(1)(B)(i) and § 2.

2. On February 19, 1993, the defendant pleaded guilty to Counts One and Ten of the Indictment pursuant to a Plea Agreement containing the following special conditions: 1) Pursuant to Rule 11(e)(1)(A) of the Federal Rules of Criminal Procedure, following the entry of final judgment, the government will move to dismiss Counts Two through Nine and Counts Eleven through Twenty-One. 2) The sentence in Counts One and Ten will be imposed in accordance with the United States Sentencing Commission Guidelines Manual. The government and the defendant agree that the applicable sentencing guideline is set forth in § 2S1.1 of the Guidelines Manual. The defendant understands that the Court is not limited to the facts and events contained in the Statement of Facts which is

incorporated into this Plea Agreement. 3) The government and the defendant agree that it is within the discretion of the Bureau of Prisons to decide whether or not to furlough the defendant for spinal reconstructive surgery and to set the length, terms, and conditions of any such furlough, if granted. 4) if the defendant fails to enter a plea of guilty, or later seeks to withdraw his guilty plea, or if the court refuses to accept the defendant's plea of guilty, or if the defendant fails to carry out any obligation under the Plea Agreement, the government shall be free to reinstate the indictment and/or seek indictment of the defendant without limitation as to the nature or number of offenses sought to be charged. If any of these circumstances occur, the defendant agrees that any and all applicable criminal statute of limitations are tolled form the date on which this Plea Agreement is signed and continuing for sixty days after the defendant first notifies the court in writing that he will attempt to withdraw from the Plea Agreement or sixty days after the date on which the defendant rejects the Plea Agreement. 5) The defendant adopts the Statement of Facts which is incorporated into this Plea Agreement. 6) The defendant agrees to forfeit the real property known as Lou-Roe farms, which is the subject of a civil forfeiture action entitled United States v. Certain Real Property Located in Levy County, Florida, With All Appurtenances and Improvements Thereon, Including, But Not Limited To, Fixtures, Cash and Personal Property Lcoated On the Premises, To Include Household Furnishings and Farm Equipment of Individual Value of $1,000.00 or More, No. 92-10037, filed in the Northern District of Florida. Forfeiture includes only real property and fixtures and does not include personal property. All other assets previously frozen or seized will be returned and 7) This Plea Agreement binds only the United States Attorney's Office for the Northern District of Florida and the Money Laundering Section, Criminal Division, United States Department of Justice.

The Offense Conduct

3. In 1985, Anthony Gurino purchased real estate in Levy county, Florida, where he established Lou-Roe Farms, a horse farm consisting of approximately 110 acres. Subsequently, in 1988,

ownership of the property was transferred by Quit Claim Deed to Anthony Gurino's wife, Barbara Pace Gurino, and son, Louis Gurino.

*4. Anthony Gurino also owned ARC Plumbing and Heating (ARC which was incorporated int eh State of New York on November 27, 1970. In May of 1986, ARC was debarred from obtaining New York City agency contracts because of Anthony Gurino's failure to answer questions regarding his indictment in the Eastern District of New York on charges of Conspiracy (Obstruction of Justice) and Obstruction of Justice. On June 14, 1986, Hi-Tech Mechanical, Inc. (Hi-Tech) was incorporated in the State of New York. Patrick Borello, formerly Executive Vice President for ARC, and Augusto Aufiero, formerly an outside superintendent for ARC, were listed as President and Vice- President respectively. In 1987, Hi-Tech was debarred form city contracts after a finding by the New York City Board of Responsibility that Hi-Tech was an "alter-ego" of ARC. In May of 1988, the U.S. Department of Housing and Urban Development (HUD) suspended the defendant form all participation in any HUD program, and on June 21, 1991, HUD formally debarred the defendant form participation in any HUD program.

5. After Hi-Tech was debarred, Anthony Gurino's association with Hi-Tech was concealed in a series of corporate mergers. On June 6, 1989, in a reverse acquisition, Hi-Tech became a wholly owned subsidiary of a public company named Atratech. This business entity merged with Endres Plumbing, with a combined business being operated under the name Hi-Tech Mechanical. Patrick Borello, Augusto Aufiero, and Vincent Sorena became President, Secretary, and Chief Executive Officer respectively. Anthony Gurino served as served as chief consultant. In this position, Mr. Gurino, along with the other officers, controlled the day-to-day operational decisions of Hi-Tech Mechanical. His duties included supervisory authority over most employees, reviewing authority of expenditures, approval authority of invoices, involvement in coordination and estimating of jobs, and the basic structuring of the company.

6. Between 1989 and February, 1992, Hi-Tech Mechanical submitted bids on several New York City Housing Authority (NYCHA) plumbing contracts, most of which were funded through the Comprehensive Improvement Assistance Program (CIAP) sponsored by the United States Department of Urban Development (HUD). In order to qualify for NYCHA contracts and for contracts funded by HUD, contractors were required to submit documents identifying the company principals, including consultants. In 1989, 1990 and 1991, Patrick Borello, Augusto Aufiero, and Vincent Soreno submitted the required documents through the United States mail. The submitted documents revealed that Hi-Tech had previously been debarred as an "alter-ego" of ARC, however, failed to reveal Anthony Gurino's position as a consultant. Disclosure of Anthony Gurino's participation in Hi-Tech could have resulted in NYCHA/HUD's refusal to award the company any contracts. Between 1989 and 1992, the company was awarded twenty-eight such contracts and received payments totaling $8,740,874.31.

7. B.A.P. Construction Management Services, (B.A.P.) was incorporated in the State of New York on August 4, 1989. Barbara Pace (the defendant's wife) was listed as one hundred percent shareholder. This business entity functioned as the primary conduit for the transfer of funds from Hi-Tech Mechanical to Lou-Roe Farms and Anthony Gurino. Jocanso Plumbing (headed by David Cannizaro) and Cardinal Plumbing and Heating (headed by Robert Fidduccia) also served as conduits for the transfer of funds from Hi-Tech to Lou-Roe Farms and Anthony Gurino. Some of these funds were proceeds from the fraudulently obtained NYCHA/HUD contracts. B.A.P. also received legitimate income from non-public contracts, which funds were commingled with the fraudulently obtained income.

8. The NYCHA/HUD contracts awarded to Hi-Tech were satisfactorily performed and there is no indication that any government agency sustained a financial loss as a result of the instant offense. The government has determined that at least $257,900.00 of the funds obtained from NYCHA/HUD contracts was transferred to Lou-Roe Farms in Morriston, Florida. These

transactions are as follows: On February 17, 1990, Cardinal Plumbing transferred $25,000.00; on May 10, 1990, Cardinal Plumbing transferred $2,000.00; on May 16, 1990, B.A.P. transferred $10,000.00; on June 25, 1990, Cardinal Plumbing transferred $20,000.00; on August 22, 1990, B.A.P. transferred $5,000.00; on August 29, 1990, B.A.P. transferred $10,000.00; on August 30, 1990, B.A.P. transferred $10,000.00; on September 20, 1990, B.A.P. transferred $10,000.00; on December 11, 1990, B.A.P. transferred $25,000.00; on December 18, 1990, B.A.P. transferred $4,900.00; on December 28, 1990, Jocanso, Inc. transferred $100,000.00; on January 22, 1991, B.A.P. transferred $5,000.00; on February 21, 1991, B.A.P. transferred $2,000.00; on March 7, 1991, B.A.P. transferred $5,000.00; on March 19, 1991, B.A.P. transferred $4,000.00; on May 1, 1991, B.A.P. transferred $6,000.00; on May 8, 1991, B.A.P. transferred $1,500.00; on May 15, 1991, B.A.P. transferred $5,000.00; on May 21, 1991, B.A.P. transferred $3,500.00; and on May 29, 1991, B.A.P. transferred $4,000.00. Such funds were deposited in Lou-Roe Farms bank account at Sun Bank in Ocala, Florida. The movement of these funds acted in whole and in part to conceal or disguise the nature, location, source or ownership or control of the funds.

Victim Impact

9. There is no identifiable victim in this case.

Adjustment for Obstruction of Justice

*10. The defendant assured the Court at the time of taking the plea 1) that it was in fact freely and voluntarily entered into, 2) that the facts as they appear on record were true and correct and 3) that no force, pressure, coercion, or intimidation of any type was extended upon him from any source to enter into the plea. During the hearing on the motion to withdraw plea, the defendant told the Court that he was lying to the Court when he made these representations and assurances. The defendant, by committing perjury during a judicial proceeding, did obstruct or impede the administration of justice.

Adjustment for Acceptance of Responsibility

*11. A reduction for acceptance of responsibility is generally not warranted when there has been an adjustment for obstruction of justice, except in extraordinary cases. There are no extraordinary factors present in this case to warrant a reduction for acceptance of responsibility for his criminal conduct. Furthermore, the defendant now denies guilt, and does not accept responsibility for his criminal conduct.

* Revised

Offense Level Computations

12. The 1992 edition of the Guidelines Manual has been used in this case. Pursuant to the provisions found in U.S.S.G. § 3D1.2(b), Counts One and Ten are related offenses and are grouped.

Counts One and Ten -- Conspiracy and Money Laundering.

13. **Base Offense Level:** The guideline for an 18 U.S.C. § 371 offense (Conspiracy) is found in § 2X1.1. That section provides that the base offense level is the base offense level from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty. The base offense level for an 18 U.S.C. § 1956(a)(1)(B) offense is found in U.S.S.G § 2S1.1, which provides that the base offense level is twenty. 20

14. **Specific Offense Characteristics:** Because the value of the funds exceeded $200,000.00 but was less than $350,000.00 the offense level is increased two levels pursuant to U.S.S.G. 2S1.1(b)(2)(C). +2

15. **Victim-Related Adjustments:** None. 0

16. **Adjustments for Role in the Offense:** The defendant +2

was an organizer, leader, or supervisor in a criminal activity. Pursuant to U.S.S.G. § 3B1.1, a two level increase is warranted.

*17. **Adjustment for Obstruction of Justice:** Pursuant to U.S.S.G § 3C1.1, the offense level is increased two levels. +2

*18. **Adjusted Offense level (Subtotal):** Twenty-six. 26

*19. **Adjustment for Acceptance of Responsibility:** The defendant has not shown recognition of responsibility for his criminal conduct and a reduction for acceptance of responsibility is not applicable under U.S.S.G. § 3E1.1. 0

*20. **Total Offense Level:** Twenty-six. 26

21. **Chapter Four Enhancements:** None. 0

*22. **Total Offense Level:** Twenty-six. 26

PART B. DEFENDANTS CRIMINAL HISTORY

Juvenile Adjudication(s)

23. None known.

Adult Criminal Conviction(s)

	Date of Arrest	Conviction/ Court	Date Sentence Imposed/Disposed	Guide-line	Pnt
*24.	6/4/85 (age 41)	1) Conspiracy Obstruction of Justice). 2) Obstruction of Justice. Eastern	6/8/90: 1) CAG 5 years, $10,000.00 fine. 2) CAG 5 years, years, execution sentence suspended, 5 years probation,	4A1.1 (a)	3

District of New York.	consecutive to prison term, $5,000.00 fine.

The defendant was represented by Counsel. **Circumstances:** Gene Gotti, Angelo Ruggiero and John Carneglia were partners in a criminal enterprise that earned large sums of money dealing in heroin and other narcotics. One of the members of the enterprise was Ruggiero's brother, Salvatore, who from the mid-1970's until May 6, 1982, was a fugitive from justice for whom arrest warrants had been issued based on indictments charging heroin trafficking, hi-jacking, and income tax evasion. While a fugitive, Salvatore Ruggiero was in contact with his brother Angelo, and amassed substantial amounts of money and assets from dealing in narcotics.

On May 6, 1982, Salvatore Ruggiero died when a private Leer [sic] jet in which he and his wife were flying crashed into the Atlantic Ocean near Savannah, Georgia. His death precipitated an FBI inquiry into his previous whereabouts and whether anyone had harbored him while he was a fugitive; and the location and extent of the assets he accumulated from his narcotics trafficking. That inquiry coincided and overlapped with an on-going investigation into the narcotics business of Angelo Ruggiero, Gene Gotti and John Carneglia, who subsequent to Salvatore's death, continued to organize, manage and supervise this multi-kilogram heroin and drug cocaine distribution network. During this investigation, a court authorized electronic eavesdropping device was concealed in the home of Angelo Ruggiero in April, May, and June of 1982.

Subsequent to the death of Salvatore Ruggiero, Angelo Ruggiero attempted to locate and gain control of his brother's assets and his portion of narcotics trafficking enterprise. The conversations recorded in Ruggiero's home revealed that, while Salvatore Ruggiero was a fugitive, he either purchased or attempted to purchase real estate monies accrued from narcotics trafficking but did so by using other persons, names, and corporations owned by others, to avoid detection by law enforcement authorities. Anthony Gurino and Caesar Gurino were among those who aided Salvatore Ruggiero and Angelo Ruggiero in their efforts to conceal these transactions. In addition, Anthony Gurino and Caesar Gurino attempted to impede and obstruct the grand jury investigating these transactions and other criminal activities.

Execution of the defendant's sentence was stayed pending appeal. The conviction was affirmed and the defendant commenced service of sentence of June 19, 1991. The defendant's presumptive release date on parole was February 17, 1993. However, because of the pending charges in the Northern District of Florida, the defendant's release has been delayed pending a special re-consideration hearing. The defendant's mandatory release date is September 5, 1994.

Bureau of Prison records reflect that the defendant's overall institutional adjustment has been satisfactory, however he did receive one incident report for Using Phone or Mail Without Authorization. For this incident, the defendant received a 21-day phone restriction.

Criminal History Computation

25. The criminal conviction above results in a subtotal criminal history score of three.

26. At the time that the instant offense was committed, the defendant was under the criminal justice sentence imposed in the Eastern District of New York on June 8, 1990. Pursuant to U.S.S.G § 4A1.1(d), two points are added.

27. The total of the criminal history points is five. According to the Sentencing Table (Chapter Five, Part A) four to six criminal history points establish a Criminal History Category of III.

Other Criminal Conduct

28. None known.

Pending Charges

29. None known.

Other Arrests

30.

Date of Arrest	Charge	Disposition
1/8/63 (age 19)	Felonious Assault, Brooklynn, New York.	4/3/63, dismissed

31.

Date of Arrest	Charge	Disposition
11/1/63 (age 20)	Possession of Bookmaking Records; Bookmaking, Queens, New York.	Unavailable.

The defendant indicates this charge was dismissed.

*32.

Date of Arrest	Charge	Disposition
5/27/86 (age 43)	Filing a False Instrument, Brooklyn, New York.	9/12/88, dismissed.

The defendant was convicted on March 19, 1987 and sentenced to three years probation. The conviction was reversed and the case dismissed by the Appellate Division on grounds of insufficient evidence.

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

33. The defendant was born on May 7, 1943 in Brooklyn, New York, the second of four children born to the union of Louis and Rose Gurino.

34. Father, Louis Gurino, died unexpectedly in 1960 of a cerebral hemmorhage. At the time of his death, the father was employed as a barber. The defendant's mother, Rose Gurino, age 76, is a retired seamstress.

35. The defendant has three siblings: Roseanne Gurino Saborese, age 51, who resides in Long Island, New York, and is a housewife; Carol Gurino Noto, age 44, who resides in Long Island, New York, and is a housewife; and Caesar Gurino, age 39, who is serving a five year commitment sentence imposed in the Eastern District of New York for Obstruction of Justice.

36. Relatives describe the defendant as a hardworking family man. Following the death of his father, the defendant stepped in to help his mother raise the other children, while attending school at night to obtain his plumber's license.

37. The defendant married Barbara Pace on April 23, 1965. He and his wife have two children, Louis Gurino, age 27, who operates Lou-Roe Horse Farm in Morriston, Florida; and Rose Marie Gurino, age 22, who lives with the defendant's wife and is unemployed.

38. Barbara Gurino, a codefendant in this case, resides in a single family home in Jamaica Estates, Queens. She is not employed outside the home at the present time.

Physical Condition

39. The defendant stands 5'7", wights 180 pounds, has brown hair and brown eyes.

40. Bureau of Prisons records reflect that the defendant was transferred to the Federal Medical Center at Rochester, Minnesota on September 24, 1992. While incarcerated at this facility, Mr. Gurino was evaluated and treated for lumbar spondylolisthesis with L-5 radiculopathy. He underwent consultations with Mayo Clinic and records reflect that surgery will be necessary in the future.

*41. The defendant indicates that he suffers from occasional chest pain for which he has been prescribed nitroglycerin at the Federal Medical Center in Rochester, Minnesota. According to the Medical Department at the Levy County Jail, the defendant was prescribed Darvocette-100, at their facility, but is not on medication at the present time.

Mental and Emotional Health

42. The defendant has no history of mental or emotional problems.

Substance Abuse

43. The defendant has no history of alcohol or drug abuse.

Education and Vocational Skills

44. The defendant left Franklyn K. Lane High School in Brooklyn, New York in 1959. He subsequently became an apprentice under the supervision of Plumber's Joint Apprenticeship Committee of Brooklyn and Queens, and was qualified as a journeyman plumber in February of 1968. The defendant was certified as a master plumber with the Department of Buildings on October 16, 1972.

45. While serving the commitment sentence imposed in the Eastern District of New York, the defendant earned his General Equivalency Diploma.

Employment Record

46. The defendant is in custody and is unemployed.

47. Between 1969 and 1990, the defendant owned and operated ARC Plumbing and Heating Corporation located in Ozone Park, New York. This business has reportedly been inactive for approximately three years. The defendant's 1990 federal income tax return reflected an income of $104,000.00 from this

business. (Income tax returns for 1991 and 1992 has not been filed yet).

48. The defendant reported that he owns B.A.P. Construction Management Services which was incorporated in New York in 1989, to provide consulting services to plumbing companies. He states that this business entity is inactive at the present time. Anthony and Barbara Gurino's 1990 income tax return reflects that the latter received wages of $52,000.00 from B.A.P. in 1990.

*49. The defendant purchased property in Levy County, Florida in 1985 and established a horse farm, Lou-Roe Farms. Florida Department of State records reflect that Lou-Roe Properties (spelling reflected on state records) was incorporated on April 19, 1985 and involuntarily dissolved on November 14, 1986. Anthony Gurino is listed as Director. Lou Roe Farms was also incorporated on April 19, 1985 and is an active corporation. Louis Gurino is listed as President and Barbara Gurino is listed as Director/Secretary.

Financial Condition: Ability to Pay

50. The defendant submitted a financial statement reflecting the following information:

Equity in Assets:

Real estate located at 97-12 101 Street, Ozone Park, New York (owned by ARC Plumbing and Heating Corporation):*	$21,350.00

*The defendant stated that this property was purchased in 1973 for $169,500. The present fair market value is $300,000.00 and there are two outstanding mortgages totaling $278,650.00.

Unsecured Debts:

Credit cards:	$9,149.00

Net Worth:		$12,201.00

51. The Presentence Investigation Report completed in the Eastern District of New York in 1990 reflects that the defendant and his wife had a net worth of $3,354,500. The following assets and liabilities were reported:

Cash:		$30,500.00
Investments:		
ARC Plumbing and Heating:		50,000.00
Lou-Roe Farms:		535,000.00
Noel Holding Company:		630,000.00
91-06 Holding Company:		100,000.00
Bob-Rob Realty:		260,000.00
Real Estate:	972,000.00	
B.A.P. Construction Management Company:	60,000.00	455,000.00
Horses:	62,000.00	
Stallion shares:	43,000.00	
Personal residence:	800,000.00	
Insurance:	50,000.00	42,540.00
Personal effects:	30,000.00	
Jewelry:	20,000.00	
Total Assets:	$3,642,500.00	$ 7,500.00
		$1,506,440.00
Mortgage payable - principle residence:	280,000.00	
Total Charge Accounts:	8,000.00	
		$ 26,838.00
Liabilities:	288,000.00	
		$1,479,602.00

The defendant's wife submitted a personal financial statement reflecting the following information:

		$ 1,000.00
		5,166.66
Personal checking accounts:	$ 1,100.00	1,333.00
IRA account:	6,300.00	
		$ 7,500.00
Equity in other assets:		
Real Estate: 211 Ainslie Street, Brooklyn, New York:	300,000.00	
Real Estate: 18-11 43rd Street, Astoria, New York, 50% interest:	140,000.00	
Real Estate: 75-10 91st Street, Woodhaven, New York, 50% interest:	25,000.00	$ 2,860.00 500.00
Real Estate: 185-07 80th Drive, Jamaica Estates, New York, primary residence:	424,000.00	
Real Estate: 155-42, 44, 46 79th Street, Howard Beach, New York:	105,000.00	
Real Estate: Lou-Roe Farms, Morriston, Florida, 50% interest:		455,000.00
Personal Property: Lou-Roe Farms, 50% interest (this information was obtained from Levy County, Florida property records):		42,540.00
Unencumbered Assets:		
1988 Mercury Cougar:		$ 7,500.00

Total Assets:	$1,506,440.00

Unsecured Debts:

Credit cards:	$ 26,838.00
Net Worth:	$1,479,602.00

Monthly Cash Flow:

Income*:

Rental income (spouse):	$ 1,000.00
Commissions:	5,166.66
Net profit from business:	1,333.33
Total:	$ 7,500.00

*Additional information regarding the source and nature of the reported commission and business income has been requested from the defendant, however has not yet been received.

Necessary Monthly Expenses:

The defendant reported the following necessary monthly expenses totaling $6,000.

Mortgage:	$ 2,860.00
Utilities:	500.00
Telephone:	100.00
Groceries:	500.00
Auto insurance:	275.00
Life insurance:	200.00
Homeowner's insurance:	165.00
Minimum installment payment:	763.00
Transportation:	100.00
Medical:	300.00
Clothing:	100.00
Miscellaneous:	137.00
	$ 6,000.00

53. Based on the above information, the defendant does have the financial ability to pay a fine.

PART D. SENTENCING OPTIONS

Custody

54. **Statutory Provision: Count One:** The maximum term of imprisonment is five (5) years. 18 U.S.C. § 371. **Count Ten:** The maximum term of imprisonment is twenty (20) years. 18 U.S.C. § 1956(a)(1)(B)(i).

*55. **Guideline Provisions:** Based on an offense level of 26 and a Criminal History Category of III, the guideline imprisonment range is 78 to 97 months.

*Revised

Impact of the Plea Agreement

56. The defendant pleaded guilty to Counts One and Ten of the Indictment charging him with Conspiracy and Money Laundering. The remaining counts of the Indictment are to be dismissed. All offense conduct charged against the defendant has been taken into consideration pursuant to U.S.S.G. § 1B1.3 (Relevant Conduct). Therefore, this provision does not affect the offense level or any other guideline computation.

Supervised Release

57. **Statutory Provisions: Count One:** The authorized term of supervised release for a Class D felony is not more than three (3) years. 18 U.S.C. § 3583. **Count Ten:** The authorized term of supervised release for a Class C felony is not more than three (3) years. 18 U.S.C. § 3583.

58. **Guideline Provisions: Count One:** The authorized term of supervised release is not less than two (2) years nor more than

three (3) years. U.S.S.G. § 5D1.2. **Count Ten:** The authorized term of supervised release is not less than two (2) years nor more than three (3) years. U.S.S.G. § 5D1.2.

Probation

59. **Statutory Provisions: Count One:** The authorized term of probation is not less than one (1) nor more than five (5) years. 18 U.S.C. § 3561. **Count Ten:** The authorized term of probation is not less than one (1) nor more than five (5) years. 18 U.S.C. § 3561.

60. **Guideline Provisions: Count One:** Probation is not authorized. U.S.S.G. § 5B1.1. **Count Ten:** Probation is not authorized. U.S.S.G. § 5B1.1.

Fines

61. **Statutory Provisions: Count One:** The maximum fine is $250,000. 18 U.S.C. § 3571. **Count Ten:** The maximum fine is $500,000. 18 U.S.C. § 1956(a)(1).

62. A special assessment of $50.00 in each count for a total of $100.00 is mandatory pursuant to 18 U.S.C. § 3013.

63. **Guideline Provisions:** Pursuant to U.S.S.G. § 5E1.2(c)(3), the fine range for this offense is from $12,500.00 to $125,000.

64. Subject to the defendant's ability to pay, the Court shall impose an additional fine amount that is at least sufficient to pay the cost to the government of any imprisonment, probation, or supervised release ordered pursuant to U.S.S.G. 5E1.2(i). The most recent advisory from the Administrative Office of the U.S. Courts suggest that a monthly cost of $1,734.00 be used for imprisonment, a monthly cost of $180.90 be used for supervision, and a monthly cost of $1,132.00 be used for community confinement.

Restitution

65. Not applicable.

Denial of Federal Benefits

66. Not applicable.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

67. The probation officer has no information concerning the offense or the offender which would warrant a departure from the prescribed sentencing guidelines.

Respectfully submitted,
Kenneth B. Anderson
Chief U.S. Probation Officer

By: /s/ Karen M. Gilliam
Karen M. Gilliam
U.S. Probation Officer

Approved:

/s/ Jack F. Gamble
Jack F. Gamble
U.S. Probation
Officer-in-Charge

KMG/lp

ADDENDUM TO THE PRESENTENCE REPORT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT FLORIDA
UNITED STATES V. Anthony J. GURINO,
DOCKET NO. GCR92-01007-001

68. The Probation Officer certifies that the Presentence Report,

including any revision thereof, has been disclosed to the defendant, his attorney, counsel for the Government, and that the content of this Addendum has been communicated to counsel. The Addendum fairly states any objections they have made.

OBJECTIONS

By the Government

69. The Government has made no objections to the Presentence Report which was hand-delivered to them on March 19, 1993.

By the Defendant*

*Filed by previously retained counsel, Gerald L. Shargel.

70. **As to Paragraph 4**, counsel for the defendant states that HUD formally debarred Mr. Gurino on June 21, 1991.

71. The presentence report has been revised to reflect this date.

72. **As to Paragraph 14**, counsel for the defendant states that the defendant's offense level should not be increased because the amount laundered was less than $100,000.

73. Records reflect that $388,887.00 was transferred from Jocanso to B.A.P.; $459,957.00 was transferred from Hi-Tech Mechanical to B.A.P.; and $203,645.00 was transferred from Cardinal Plumbing and Heating to B.A.P. B.A.P. transferred a total of $605,195.00 to Louis Gurino and/or Lou-Roe Farms. In addition to the funds which flowed through B.A.P., a total of $129,019.00 was transferred from Jocanso to Lou-Roe Farms and a total of $136,659.00 was transferred from Cardinal Plumbing and Heating to Lou-Roe Farms. Of these amounts, the Government maintains that there is evidence to support a

*Filed by previously retained counsel, Gerald L. Shargel.

finding that at least $257,900.00 constituted "laundered money." This issue remains unresolved.

74. **As to Paragraph 16**, counsel for the defendant states that the defendant should not receive any points for role in the offense because he was not an organizer, leader, or supervisor of the crimes at issue. According to counsel, the principals of Hi-Tech (Sorena, Borello and Aufiero), not the defendant, decided to bid for the New York City Housing Authority contracts. For business reasons, they, not the defendant, decided not to disclose in the bid documentation the fact that Hi-Tech was employing the defendant as a consultant.

75. Records in the Government's possession reflect that the defendant had a significant role in the operation of Hi-Tech Mechanical. He scheduled and required attendance at monthly office meetings. Each week he was provided 1) a copy of the check register for the week, 2) a copy of manual checks or lists, and 3) the check book balances and a copy of the receivables for the week. And, his approval was required to process invoices if the original purchase orders could not be found. The evidence thus supports a finding that the defendant occupied a leadership role within Hi-Tech Mechanical. However, even if the defendant was not involved in the company's decision to bid on New York City Housing Authority contracts, he did occupy a leadership role in the laundering of funds obtained from these contracts. The defendant established B.A.P. Construction Management Services, which functioned as the primary conduit for the transfer of funds from Hi-Tech Mechanical to Lou-Roe Farms. To conceal his association with B.A.P., and thereby facilitate the commission of the instant offense the defendant listed his wife, Barbara Pace, as one hundred percent shareholder. By all accounts, this was a nominal position and the wife was not an active participant in the business. The issue remains unresolved.

76. **As to Paragraph 19,** counsel for the defendant states that the defendant should receive three, rather than two points for acceptance of responsibility. According to counsel, the defendant's attorney pushed for a negotiated disposition of the

matter months before the eve of trial, and it was only because of the Government's logistical problems that a plea agreement was not negotiated earlier. Moreover, during the plea negotiations, it was always stated and expected by all concerned that the defendant would receive three, not two, points for acceptance of responsibility.

77. The Government agrees with this assessment, and the Presentence Report has been revised to reflect a three level, rather than a two level, reduction for acceptance of responsibility.

78. **As to Paragraph 24,** counsel for the defendant objects to the description of his 1985 case, which he states in [sic] inaccurate and misleading. Counsel states that Mr. Gurino was superseded into that case in 1985, two years after the other defendants had been indicted. The crimes of which he was accused were based on actions that the defendant was alleged to have taken after Sal Ruggiero had died. The defendant was actually severed from that case because, among other reasons, his alleged crimes had nothing to do with heroin or illegal narcotics activities. Rather, he was charged as a result of certain business transactions that he had entered into based on the advice of counsel. For that reason, all reference to heroin or narcotics should be deleted from the report.

79. Salvatore Ruggiero purchased or attempted to purchase real estate with monies accrued from narcotics trafficking, and did so by using other persons' names and corporations owned by others, to avoid detection by law enforcement authorities. Although Anthony Gurino was not involved in narcotics trafficking, he did aid Salvatore Ruggiero in his efforts to conceal these transactions. In addition, he did attempt to impede and obstruct the grand jury investigating these transactions and other criminal activity. The background information concerning the narcotics trafficking is therefore relevant and should be included. This information does not affect any sentencing guideline computation.

80. **As to Paragraph 24**, counsel for the defendant states that the

last line of the last full paragraph should read "Ruggiero in April, May or June 1982."

81. This date has been corrected in the Presentence Report.

82. **As to Paragraph 26**, counsel for the defendant states that as a matter of fundamental fairness and due process, the defendant's criminal history category should be a two rather than a three. Although the guidelines arguably permit the addition of two criminal history points based on the fact that the defendant committed this offense while he was under the sentence imposed for his earlier conviction, he is already being given additional punishment on his earlier case as a result of charges in this case. Because of this case, the defendant's release on the earlier case has been delayed pending a special reconsideration hearing.

83. U.S.S.G. Section 4A1.1(d), provides that two points are added if, at the time the instant offense was committed, a defendant was under a criminal justice sentence. At the time this offense was committed, the defendant was under the criminal justice sentence imposed in the Eastern District of New York, thus two points should be added. This issue remains unresolved.

84. **As to Paragraphs 30 and 31**, counsel for the defendant state that these arrests should be deleted from the report because they are thirty years old.

85. The sentencing guidelines provide that prior sentences outside the applicable time period are not used in computing the criminal history score. See U.S.S.G. Section 4A1.2(e). There is no provision for deleting ancient arrests or sentences from the presentence report. This issue does not affect any sentencing guideline computation.

86. **As to Paragraph 32**, counsel states that the defendant was not convicted on March 19, 1983.

87. The presentence report has been corrected to reflect that the defendant was convicted on March 19, 1987.

88. **As to Paragraph 41**, counsel for the defendant states that the defendant was given nitroglycerin at the Federal Medical Center in Rochester, Minnesota for his chest pain. The Darvocette 100's were prescribed for back pain.

89. The presentence report has been revised to reflect that the defendant was prescribed nitroglycerin at the Federal Medical Center in Rochester, Minnesota. This issue does not affect any sentencing guideline computation.

90. **As to Paragraph 52**, counsel for the defendant states that the commissions and net profits from business reported under monthly cash flow will be completed within the six to twelve months. As a result, the defendant will no longer receive that income.

Respectfully submitted,

By /s/ Karen M. Gilliam
Karen M. Gilliam
U.S. Probation Officer

Approved:

/s/ Jack F. Gamble
Jack F. Gamble
U.S. Probation
Officer-in-Charge

KMG/lp

Date: April 7, 1993

SECOND ADDENDUM TO THE PRESENTENCE REPORT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT FLORIDA

UNITED STATES V. Anthony J. GURINO,
DOCKET NO. GCR92-01007-001

91. On April 14, 1993, two days prior to the scheduled sentencing date of April 16, 1993, Anthony Gurino filed a motion to withdraw a guilty plea. An evidentiary hearing on this motion was held on May 27 - 28, 1993, and closing arguments were heard on June 4, 1993. The motion to withdraw guilty plea was denied on June 4, 1993. Based on information presented by Anthony Gurino during the evidentiary hearing, it appears that the three level reduction for acceptance of responsibility is not applicable, and that a two level increase for obstruction of justice is warranted.

92. On April 30, 1993, the Administrative Office of the United States Courts provided updated figures to be used for determining the costs of imprisonment, probation, or supervised release. A monthly cost of $1,734.00 is used for imprisonment, a monthly cost of $180.90 is used for supervision, a monthly cost of $1,132.00 is used for community confinement.

Respectfully submitted,

By /s/ Karen M. Gilliam
Karen M. Gilliam
U.S. Probation Officer

Approved:

/s/ Jack F. Gamble
Jack F. Gamble
U.S. Probation
Officer-in-Charge

KMG/lp
Date: April 7, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA)
)
vs.) PRESENTENCE INVESTIGATION
) REPORT
Anthony J. GURINO) Docket No. GCR92-01007-001

Prepared For: Honorable Maurice M. Paul
Chief United States District Judge

Prepared by: Karen M. Gilliam
United States Probation Officer
Gainesville, Florida
(904) 377-2086

Assistant U.S. Attorney	Defense Counsel
R. Jerome Sanford	Gerald L. Shargel
401 S.E. 1st Avenue, Room 318	150 East 58th Street
Gainesville, FL 32601	New York, NY 10155
(904) 378-0996	(212) 486-1717

Sentence Date: April 16, 1993

Offense: Count One: Conspiracy (Money Laundering), in violation of 18 U.S.C. § 371, a Class D Felony.
Penalty: 5 years/$250,000.00 fine.
Count Ten: Money Laundering in violation of 18 U.S.C. § 1956(a)(1)(b)(i), a Class C Felony.
Penalty: 20 years/$500,000.00 fine or twice the value of the property involved in the transaction.

Release Status: Defendant is serving a federal commitment sentence imposed in the Eastern District of New York.

Detainers: None.

Codefendant:

Related Cases: None.

Date Report Prepared: March 15, 1993 Date Report Revised April 7, 1993 adopts the Statement of Facts which is incorporated into this Plea Agreement. 6) The defendant agrees to forfeit the real property known as Lou-Roe farms, which is the subject of a civil forfeiture action entitled United States v. Certain Real Property Located in Levy County, Florida, Will All Appurtenances and Improvements Thereon, Including, But Not Limited to, Fixtures, Cash and Personal Property, Located on the Premises, To Include Household Furnishings and Farm Equipment of Individual Value of $1,000.00 or More. No. 92-10037, filed in the Northern District of Florida. Forfeiture includes only real property and fixtures and does not include personal property. All other assets previously frozen or seized will be returned and 7) This Plea Agreement binds only the United States Attorney's Office for the Northern District of Florida and the Money Laundering Section, Criminal Division, United States Department of Justice.

The Offense Conduct

3. In 1985, Anthony Gurino purchased real estate in Levy County, Florida, where he established Lou-Roe Farms, a horse farm consisting of approximately 110 acres. Subsequently, in 1988, ownership of the property was transferred by Quit Claim Deed to Anthony Gurino's wife, Barbara Pace Gurino, and son, Louis Gurino.

*4. Anthony Gurino also owned ARC Plumbing and Heating (ARC) which was incorporated in the State of New York on November 27, 1970. In May of 1986, ARC was debarred from obtaining New York City agency contracts because of Anthony Gurino's failure to answer questions regarding his indictment in the Eastern District of New York on charges of Conspiracy (Obstruction of Justice) and Obstruction of Justice. On June 14, 1986, Hi-Tech Mechanical, Inc. (Hi-Tech) was incorporated in the State of New York. Patrick Borello, formerly Executive Vice President for ARC, and Augusto Aufiero, formerly an outside superintendent for ARC, were listed as President and Vice-President respectively. In 1987, Hi-Tech was debarred from city contracts after a finding by the New York City Board of Responsibility, that Hi-Tech was an "alter-ego" of ARC. In May of 1988, the U.S. Department of Housing and Urban Development (HUD) suspended the defendant from all participation in any HUD program, and on June 212, 1991, HUD formally debarred the defendant from participation in any HUD program.

5. After Hi-Tech was debarred, Anthony Gurino's association with Hi-Tech was concealed in a series of corporate mergers. On June 6, 1989, in a revers acquisition, Hi-Tech became a wholly owned subsidiary of a public company named Atratech. This business entity merged with Endres Plumbing, with a combined business being operated under the name Hi-Tech Mechanical. Patrick Borello, Augusto Aufiero, and Vincent Sorena became President, Secretary and Chief Executive Officer respectively. Anthony Gurino

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*Revised

reasonable certainty. The base offense level for an 18 U.S.C. § 1956(a)(1)(B) offense is found in U.S.S.G. § 2S1.1, which provides that the base offense level is twenty.

14. Specific Offense Characteristics: Because the value of the funds exceeded $200,000.00 but was less than $350,000.00, the offense level is increased two levels pursuant to U.S.S.G. 2S1.1(b)(2)(C). +2

15. Victim Related Adjustments: None.

16. Adjustments for Role in the Offense: The defendant was an organizer, leader, or supervisor in a criminal activity. Pursuant to U.S.S.G. § 3B1.1, a two level increased is warranted. +2

17. Adjustment for Obstruction of Justice: None. 0

18. Adjusted Offense Level (Subtotal): Twenty-four. 24

*19. Adjustment for Acceptance of Responsibility: The defendant has shown recognition of responsibility for his criminal conduct and a reduction of three levels for acceptance of responsibility is applicable under U.S.S.G. § 3E1.1. -3

*20. Total Offense Level: Twenty-one. 21

21. Chapter Four Enhancements: None. 0

*22. Total Offense Level: Twenty-one. 21

PART B. DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

23. None known.

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*Revised

Adult Criminal Conviction(s)

	Date of Arrest	Conviction/ Court	Date Sentence Imposed/Disposed	Guideline	Pnt
*24.	6/4/85 age 41)	1)Conspiracy(Obstruction of Justice). 2)Obstruction of Justice. Eastern District of New York.	6/8/90: 1) CAG 5 years $10,000.00 fine. 2) CAG 5 years, execution sentence suspended, 5 years probation, consecutive to prison term, $5,000.00 fine.	4A1.1(a)	3

The defendant was represented by Counsel. Circumstances: Gene Gotti, Angelo Ruggiero and John Carneglia were partners in a criminal enterprise that earned large sums of money dealing in heroin and other narcotics. One of the members of the enterprise was Ruggiero's brother, Salvatore, who from the mid-1970's until May 6,1 982, was a fugitive from justice for whom arrest warrants had been issued based on indictments charging heroin trafficking, hi-jacking, and income tax evasion. While a fugitive, Salvatore Ruggiero was in contact wit his brother Angelo, and amassed substantial amounts of money and assets from dealing in narcotics.

On May 6, 1982, Salvatore Ruggiero died when a private Leer jet in which he and his wife were flying crashed into the Atlantic Ocean near Savannah, Georgia. His death precipitated an FBI inquiry into his previous whereabouts and whether anyone had harbored him while he was a fugitive; and the location and extent of the assets he accumulated from his narcotics trafficking. That inquiry coincided and overlapped with an on-going investigation into the narcotics business of Angelo Ruggiero, Gene Gotti, and John Carneglia, who subsequent to Salvatore's death, continued to organize, manage and supervise this multi-kilogram heroin and drug cocaine distribution network. During this investigation, a court authorized electronic eavesdropping device was concealed in the home of Angelo Ruggiero in April, May, and June of 1982.

Subsequent to the death of Salvatore Ruggiero, Angelo Ruggiero attempted to locate and gain control of his brother's assets and his portion of narcotics.

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*Revised

Pending Charges

29. None known.

Other Arrests

30.

Date of Arrests	Charge	Disposition
1/8/63 (age 19)	Felonious Assault, Brooklyn, New York	4/3/63, dismissed.

31.

Date of Arrest	Charge	Disposition
11/1/63 (age 20)	Possession of Bookmaking Records; Bookmaking, Queens, New York.	Unavailable.

The defendant indicates this charge was dismissed.

*32.

Date of Arrest	Charge	Disposition
5/27/86 (age 43)	Filing a False Instrument, Brooklyn, New York.	9/12/88, dismissed.

The defendant was convicted on March 19, 1987 and sentenced to three years probation. The conviction was reversed and the case dismissed by the Appellate Division on grounds of insufficient evidence.

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*Revised

*41. The defendant indicates that he suffers from occasional chest pains for which he has been prescribed nitroglycerin at the Federal Medical Center in Rochester, Minnesota. According to the Medical Department at the Levy County Jail, the defendant was prescribed Darvocette-100, at their facility, but is not on medication at the present time.

Mental and Emotional Health

42. The defendant has no history of mental or emotional problems.

Substance Abuse

43. The defendant has no history of alcohol or drug abuse.

Education and Vocational Skills

44. The defendant left Franklyn K. Lane High School in Brooklyn, New York in 1959. He subsequently became an apprentice under the supervision of Plumber's Joint Apprenticeship Committee of Brooklyn and Queens, and was qualified as a journeyman plumber in February of 1968. The defendant was certified as a master plumber with the Department of Buildings on October 16, 1972.

45. While serving the commitment sentence imposed in the Eastern District of New York, the defendant earned his General Equivalency Diploma.

Employment Record

46. The defendant is in custody and is unemployed.

47. Between 1969 and 1990, the defendant owned and operated ARC Plumbing and Heating Corporation located in Ozone Park, New York. This business has reportedly been inactive for approximately three years. The defendant's 1990 federal income tax return reflected an income of $104,000.00 from this business. (Income tax returns for 1991 and 1992 have not been filed yet).

48. The defendant reported that he owns B.A.P. Construction Management Services which was incorporated in New York in 1989, to provide consulting services to plumbing companies. He states that this business entity is inactive at the present time. Anthony and Barbara Gurino's 1990 income tax return reflects that the later received wages of $52,000.00 from B.A.P. in 1990.

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*Revised

*49. The defendant purchased property in Levy County, Florida, in 1985 and established a horse farm, Lou-Roe Farms. Florida Department of State records reflect that Lou-Roe Properties (spelling reflected on state records) was incorporated on April 19, 1985 and involuntarily dissolved on November 14, 1986. Anthony Gurino is listed as Director. Lou Roe Farms was also incorporated on April 19, 1985 and is an active corporation. Louis Gurino is listed as President and Barbara Gurino is listed as Director/Secretary.

*Revised

Financial Condition: Ability to Pay

50. The defendant submitted a signed financial statement reflecting the following information.

Equity Assets:

Real estate located at 97-12 101 Street, Ozone Park, New York (owned by ARC Plumbing and Heating Corporation):* $21,350.00

*The defendant stated that this property was purchased in 1973 for $169,500. The present fair market value is $300,000.00 and there are two outstanding mortgages totaling $278,650.

Unsecured Debts:

Credit cards: $9,149.00

Net Worth: $12,201.00

51. The Presentence Investigation Report completed in the Eastern District of New York in 1990 reflects that the defendant and his wife had a net worth of $3,354,500. The following assets and liability were reported:

Cash: $30,500.00

Investments:

ARC Plumbing and Heating	$50,000.00
Lou-Roe Farms:	535,000.00
Noel Holding Company:	630,000.00
91-06 Holding Company:	100,000.00
Bob-Rob Realty:	260,000.00
Telephone:	100.00
Groceries:	500.00
Auto insurance:	275.00
Life insurance:	200.00
Homeowner's insurance:	165.00
Minimum installment payment:	763.00
Transportation:	100.00
Medical:	300.00
Clothing:	100.00
Miscellaneous:	137.00
	$6,000.00

53. Based on the above information, the defendant does have the financial ability to pay a fine.

PART D. SENTENCING OPTIONS

Custody

54. Statutory Provisions: Count One: The maximum term of imprisonment is five (5) years. 18 U.S.C. § 371. Count Ten: The maximum term of imprisonment of twenty (20) years. 18 U.S.C. § 1956(a)91)(B)(i).

*55. Guideline Provisions. Based on an offense level of 21 and a Criminal History Category of III, the guideline imprisonment range is 46 to 57 months.

Impact of the Plea Agreement

56. The defendant pleaded guilty to Counts One and Ten of the indictment charging him with Conspiracy and Money Laundering. The remaining counts of the Indictment are to be dismissed. All offense conduct charged against the defendant

has been taken into consideration pursuant to U.S.S.G. § 1B1.3 (Relevant Conduct). Therefore, this provision does not affect the offense level or any other guideline computation.

ADDENDUM TO THE PRESENTENCE REPORT

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT FLORIDA
UNITED STATES V. Anthony GURINO, DOCKET NO. GCR 92-01007-001

68. The Probation Officer certified that the Presentence Report, including any revision thereof, has been disclosed to the defendant, his attorney, counsel for the Government, and that the content of this Addendum has been communicated to counsel. The Addendum fairly states any objections they have made.

OBJECTIONS

By the Government

69. The Government has made no objections to the Presentence Report which was hand-delivered to them on March 19, 1993.

By the Defendant

70. As to Paragraph 4, counsel for the defendant states that HUD formally debarred Mr. Gurino on June 21, 1991.

71. The presentence report has been revised to reflect this date.

72. As to Paragraph 14, counsel for the defendant states that the defendant's offense level should not be increased because the amount laundered was less than $100,000.

73. Records reflect that $388,887.00 was transferred from Jocanso to B.A.P.: $459,957.00 was transferred from Hi-Tech Mechanical to B.A.P.; and $203,645.00 was transferred from Cardinal Plumbing and Heating to B.A.P. B.A.P. transferred a total of $605,195.00 to Louis Gurino and/or Lou-Roe Farms. In addition to the funds which flowed through B.A.P., a total of $129,019.00 was transferred from Jocanso to Lou-Roe Farms

and a total of $136,659.00 was transferred from Cardinal Plumbing and Heating to Lou-Roe Farms. Of these amounts, the Government maintains that there is evidence to support a finding that at least $257,900.00 constituted "laundered money". The issue remains unresolved.

74. As to Paragraph 16, counsel for the defendant states that the defendant should not receive any points for role in the offense because he was not an organizer, leader, or supervisor of the crimes at issue. According to counsel, the principals of Hi-Tech (Sorena Borello, and Aufiero), not the defendant, decided to bid for the New York City Housing Authority contracts. For business reasons, they, not the defendant, decided not to disclose in the bid documentation the fact that Hi-Tech was employing the defendant as a consultant.

75. Records in the Government's possession reflect that the defendant had a significant role in the operation of Hi-Tech Mechanical. He scheduled and required attendance at monthly office meetings. Each week he was provided 1) a copy of the check register for the week, 2) a copy of manual checks or lists, and 3) the check book balances and a copy of the receivables for the week. And, his approval was required to process invoices if the original purchase orders could not be found. The evidence thus supports a finding that the defendant occupied a leadership role within Hi-Tech Mechanical. However, even if the defendant was not involved in the company's decision to bid on New York City Housing Authority contracts, he did occupy a leadership role in the laundering of funds obtained from these contracts. The defendant established B.A.P. Construction Management Services, which functioned as the primary conduit for the transfer of funds from Hi-Tech Mechanical to Lou-Roe Farms. To conceal his association with B.A.P., and thereby facilitate the commission of the instant offense the defendant listed his wife, Barbara Pace, as one hundred percent shareholder. By all accounts, this was a nominal position and the wife was not an active participant in the business. This issue remains unresolved.

76. As to Paragraph 19, counsel for the defendant states that the

defendant should receive three, rather than two points for acceptance of responsibility. According to counsel, the defendant's attorney pushed for a negotiated disposition of the matter months before the eve of the trial, and it was only because of the Government's logistical problems that a plea agreement was not negotiated earlier. Moreover, during the plea negotiations, it was always stated and expected by all concerned that the defendant would receive three, not two, points for acceptance of responsibility.

77. The Government agrees with this assessment, and the Presentence Report has been revised to reflect a three level, rather than a two level, reduction for acceptance of responsibility.

78. As to Paragraph 24, counsel for the defendant objects to the description of his 1985 case, which he states is inaccurate and misleading. Counsel states that Mr. Gurino was superseded into that case in 1985, two years after the other defendants had been indicted. The crimes of which he was accused were based on actions that the defendant was alleged to have taken after Sal Ruggiero had died. The defendant was actually severed from that case because, among other reasons, his alleged crimes had nothing to do with heroin or illegal narcotics activities. Rather, he was charged as a result of certain business transactions that he had entered into based on the advice of counsel. For that reason, all reference to heroin or narcotics should be deleted from the report.

79. Salvatore Ruggiero purchased or attempted to purchase real estate with monies accrued from narcotics trafficking, and did so by using other persons' names and corporations owned by others, to avoid detection by law enforcement authorities. Although Anthony Gurino was not involved in narcotics trafficking, he did aid Salvatore Ruggiero in his efforts to conceal these transactions. In addition, he did attempt to impede and obstruct the grand jury investigating these transactions and other criminal activity. The background information concerning the narcotics trafficking is therefore relevant and should be included. This information does not

affect any sentencing guideline computation.

80. As to Paragraph 24, counsel for the defendant states that the last line of the last full paragraph should read "Ruggiero in April, May or June 1982."

81. This date has been corrected in the Presentence Report.

82. As to Paragraph 26, counsel for the defendant states that as a matter of fundamental fairness and due process, the defendant's criminal history category should be two rather than a three. Although the guidelines arguably permit the addition of two criminal history points based on the fact that the defendant committed this offense while he was under the sentence imposed for his earlier conviction, he is already being given additional punishment on his earlier case as a result of charges in this case. Because of this case, the defendant's release on the earlier case has been delayed pending a special reconsideration hearing.

83. U.S.S.G. Section 4A1.1(d), provides that two points are added if, at the time the instant offense was committed, a defendant was under a criminal justice sentence. At the time this offense was committed, the defendant was under the criminal justice sentence imposed in the Eastern District of New York, thus two points should be added. This issue remains unresolved.

84. As to Paragraphs 30 and 31, counsel for the defendant state that these arrests should be deleted from the report because they are thirty years old.

85. The sentencing guidelines provide that prior sentences outside the applicable time period are not used in computing the criminal history score. See U.S.S.G. Section 4A1.2(e). There is no provision for deleting ancient arrests or sentences from the presentence report. This issue does not affect any sentencing guideline computation.

86. As to Paragraph 32, counsel states that the defendant was not convicted on March 19, 1983.

87. The presentence report has been corrected to reflect that the defendant was convicted on March 19, 1987.

88. As to Paragraph 41, counsel for the defendant states that the defendant was given nitroglycerin at the Federal Medical Center in Rochester, Minnesota for his chest pain. The Darvocette 100's were prescribed for back pain.

89. The presentence report has been revised to reflect that the defendant was prescribed nitroglycerin at the Federal Medical Center in Rochester, Minnesota. This issue does not affect any sentencing guideline computation.

90. As to Paragraph 52, counsel for the defendant states that the commissions and net profits from business reported under monthly cash flow will be completed with the six to twelve months. As a result, the defendant will no longer receive that income.

Respectfully submitted,

By /s/
Karen M. Gilliam
U.S. Probation Officer

Approved:

Jack F. Gamble
U.S. Probation
Officer-in-Charge

KMG/lp

Date: April 7, 1993

AMENDMENT 5

Criminal actions - Provisions concerning - Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 1341 Fraud and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both. If the violations affects a financial institution, such person shall be fined not more than $1,000.000 or imprisoned not more than 30 years, or both.

18 U.S.C. § 1956 Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity -

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with the intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part -

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States -

(A) with the intent to promote the carrying on or specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part -

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds, of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent -

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of -

(1) the value of the property, funds, or monetary instruments

involved in the transaction; or

(2) $10,000.

(c) As used in this section -

(1) the term "knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term "conducts" including initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term "transaction" includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term "financial transaction" means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term "monetary instruments" means (i) coin or currency of the Untied States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder;

(7) the term "specified unlawful activity" means -

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against nation involving -

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) kidnaping, robbery, or extortion; or

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978);

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gift for procuring loans), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody); section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving

Federal funds), section 793, 794, or 798 (relating to espionage), section 875 (relating to interstate communications), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to fraudulent Federal Deposit Insurance transactions), 1014 (relating to fraudulent loan or credit applications), 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1201 (relating to kidnaping), section 1203 (relating to hostage taking), section 1708 (theft from the mail), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2319 (relating to copyright infringement), or section 2320 (relating to trafficking in counterfeit goods and services) of this title, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Acto of 1930 (19 U.S.C. 1590) (relating to aviator smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the international Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, or any felony violation of the Foreign Corrupt Practices Act; or

(E) a felony violation of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Ocean Dumping Act (33 U.S.C. 1401 et seq.), the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(8) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury, as the Secretary of the Treasury may direct, as appropriate and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if -

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding $10,000.

(g) **Notice of conviction of financial institution.** - If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 or 5324 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

Fed.R.Crim.P. 12 PLEADINGS AND MOTIONS BEFORE TRIAL: DEFENSES AND OBJECTIONS

(b) **Pretrial Motions.** Any defense, objection, or request which is capable of determination without the trial of the general issue may be raised before trial by motion. Motions may be written or oral at the discretion of the judge. The following must be raised prior to trial:

(1) Defenses and objections based on defects in the institution of the prosecution; or

(2) Defenses and objections based on defects in the indictment or information (other than that it fails to show jurisdiction in the court or to charge an offense which objections shall be noticed by the court at any time during the pendency of the proceedings); or

(3) Motions to suppress evidence; or

(4) Requests for discovery under Rule 16; or

(5) Requests for a severance of charges or defendants under Rule 14.

Fed.R.Crim.P. 32 SENTENCE AND JUDGMENT

(e) **Plea Withdrawal.** If a motion to withdraw a plea of guilty or nolo contendere is made before sentence is imposed, the court may permit the plea to be withdrawn if the defendant shows any fair and just reason. At any later time, a plea may be set aside only on direct appeal or by motion under 28 U.S.C. § 2255.

AMENDMENT 18

§ 2S1 Laundering of Monetary Instruments Engaging in Monetary Transactions in Property Derived from Unlawful Activity

(A) Base Offense Level (Apply the greatest):

(1) The offense level for the underlying offense from which the funds were derived, if the defendant committed the underlying offense (or otherwise would be accountable for the commission of the underlying offense under §1B1.3 (Relevant Conduct) and the offense level for that offense can be determined; or

(2) **12** plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds, if the defendant knew or believed that the funds were the proceeds of, or were to be used to promote, an offense involving the manufacture, importation, or distribution of controlled substances or listed chemicals; a crime of violence; or an offense involving firearms or explosives, national security, or international terrorism; or

(3) **8**plus the number of offense levels from the table in §2F1.1 (Fraud and Deceit) corresponding to the value of the funds.

(B) Specific Offense Characteristics

(1) If the defendant knew or believed that (A) the financial or monetary transactions, transfers, transportation, or transmissions were designed in whole or in part to conceal or disguise the proceeds of criminal conduct, or (B) the funds were to be used to promote further criminal conduct, increase by **2** levels.

(2) If subsection (b)(1)(A) is applicable and the offense (A) involved placement of funds into, or movement of funds through or from, a company or financial institution outside the United States, or (B) otherwise involved a sophisticated form of money laundering, increase by **2** levels.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1956, 1957.

Application Notes:

1. "Value of the funds" means the value of the funds or property involved in the financial or monetary transactions, transportation, transfers, or transmissions that the defendant knew or believed (A) were criminally derived funds or property, or (B) were to be used to promote criminal conduct.

When a financial or monetary transaction, transfer, transportation or transmission involves legitimately derived funds that have been commingled with criminally derived funds, the value of the funds is the amount of the criminally derived funds, not the total amount of the commingled funds. For example, if the defendant deposited $50,000 derived from a bribe together with $25,000 of legitimately derived funds, the value of the funds is $50,000, not $75,000.

Criminally derived funds are any funds that are derived from a criminal offense; e.g., in a drug trafficking offense, the total proceeds of the offense are criminally derived funds. In a case involving fraud, however, the loss attributable to the offense occasionally may be considerably less than the value of the criminally derived funds (e.g., the defendant fraudulently sells stock for $200,000 that is worth $120,000 and deposits the $200,000 in a bank; the value of the criminally derived funds is $200,000, but the loss is $80,000). If the defendant is able to establish that the loss, as defined in §2F1.1 (Fraud and Deceit), was less than the value of the funds (or property) involved in the financial or monetary transactions, transfers, transportation, or transmissions, the loss from the offense shall be used as the "value of the funds."

2. If the defendant is to be sentenced both on a count for an offense from which the funds were derived and on a count under this guideline, the counts will be grouped together under subsection (c) of §3D1.2 (Groups of Closely-Related Counts).

3. Subsection (b)(1)(A) provides an increase for those cases that involve efforts to make criminally derived funds appear to have a legitimate source. This subsection will apply, for example, when the defendant conducted a transaction through a straw party of a front company, concealed a money-laundering transaction in a legitimate business, or used an alias or otherwise provided false information to disguise the true source or ownership of the funds.

4. In order for subsection (b)(1)(B) to apply, the defendant must have known or believed that the funds would be used to promote further criminal conduct, i.e., criminal conduct beyond the underlying criminal conduct from which the funds were derived.

5. Subsection (b)(2) provides an additional increase for those money laundering cases that are more difficult to detect because sophisticated steps were taken to conceal the origin of the money. Subsection (b)(2)(B) will apply, for example, if the offense involved the "layering" of transactions, i.e., the creation of two or more levels of transaction that were intended to appear legitimate.

Background: The statutes covered by this guideline were enacted as part of the Anti-Drug Abuse Act of 1986, These statutes cover a wide range of conduct. For example, they apply to large-scale operations that engage in international laundering of illegal drug proceeds. They also apply to a defendant who deposits $11,000 of fraudulently obtained funds in a bank. In order to achieve proportionality in sentencing this guideline generally starts from a base offense level equivalent to that which would apply to the specified unlawful activity from which the funds were derived. The specific offense characteristics provide enhancements if the offense was designed to conceal or disguise the proceeds of criminal conduct and if the offense involved sophisticated money laundering.

* * *

§3D1.2 Group of Closely Related Counts

* * *

(d) * * *

Offenses covered by the following guidelines are to be grouped under this subsection:

* * *

§§2S1.1, 2S1.3;

* * *

§8C2.1 Applicability of Fine Guidelines

* * *

(a) * * *

§§2S1.1, 2S1.3;

* * *

§8C2.4 Base Fine

* * *

Commentary

Application Notes:

* * *

5. Special instructions regarding the determination of the base fine are contained in: §2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery); §2C1.1 (Offering Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right); §2C1.2 (Offering, Giving, Soliciting, or Receiving a Gratuity); §2E5.1 (Offering Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan, Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations); or §2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors);

* * *

Appendix A (Statutory Index)

* * *

18 U.S.C. § 1957

Reason for Amendment: This revises and consolidates §§2S1.1 and 2S1.2 to simplify application and better assure that the offense levels comport with the relative seriousness of the offense conduct. When the Commission originally promulgated §§2S1.1 and 2S1.2 to govern sentencing for the money laundering and monetary transaction offenses found at 18 U.S.C. §§ 1956 and 1957, these statutes were relatively new and, therefore, the Commission had little case experience upon which to base the guidelines. Since then, courts have construed the elements of these offenses broadly. As a result, the Commission has found that §§2S1.1 and 2S1.2 do not adequately distinguish the varying degrees of offense conduct that are sentenced under these guidelines.

This amendment responds to concerns about the operation of these guidelines by tying the base offense levels of the revised guideline more closely to the underlying conduct that was the source of the illegal proceeds. If the defendant committed the underlying offense and the offense level can be determined, subsection (a)(1) provides a base offense level equal to that for the underlying offense. In other instances, the base offense level is keyed to the value of funds involved. The amendment uses specific offense characteristics to assure greater punishment when the defendant knew or believed that the transactions were designed to conceal the criminal nature of the proceeds or when the funds were to be used to promote further criminal activity. An additional increase is provided under subsection (b)(2) if sophisticated efforts at concealment were involved.

Subsections (a)(2) and (a)(3) provide "fallback" offense levels that will apply primarily in cases in which the offense level for the underlying conduct cannot be determined. Subsection (a)(3) provides an offense level of eight plus the offense level from the table in §2F1.1 (Fraud and Deceit). This offense level generally corresponds to the offense level for fraud and theft offenses with more than minimal planning. Subsection (a)(2) provides an offense level of 12 plus the offense level from the table in §2F1.1 for cases in which the defendant knew or believed the funds were derived from, or were to be used to further, certain serious offenses (e.g., drug trafficking offenses). This approach is consistent with the current guideline structure, which generally treats such offenses as at least four levels more serious than typical economic offenses (e.g., fraud).

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA
GAINESVILLE DIVISION

UNITED STATES OF AMERICA

vs.

ANTHONY J. GURINO,
LOUIS GURINO,
BARBARA ANN PACE GURINO,
VINCENT SORENA,
PATRICK BORELLO, and
AUGUSTO AUFIERO
________________________________/

SEALED INDICTMENT

THE GRAND JURY CHARGES:

PARTIES, PERSONS AND ENTITIES

That at times material to this indictment:

1. ANTHONY J. GURINO controlled the financial operations of Arc Plumbing and Heating Corporation ("ARC"), Hi-Tech Mechanical, Inc. ("HI-TECH"), and various other New York corporations, and Lou-Roe Farms, a horse farm in Levy County, Florida.

2. LOUIS GURINO, the son of ANTHONY J. GURINO, operated and nominally owned Lou-Roe Farms in Levy County, Florida and was the signatory for that entity's bank account at the Sun Bank in Ocala, Marion County, Florida.

3. BARBARA ANN PACE GURINO, the wife of ANTHONY J. GURINO owned Lou-Roe Farms with LOUIS GURINO and jointly owned the building which housed Arc Plumbing and Heating, Hi-Tech Mechanical, Inc. and Atratech in Astoria, Queens, New York. She was also the signatory to the bank account of B.A.P. Construction Management Services, Ltd. ("B.A.P."), a New York corporation.

4. VINCENT SORENA was the chief executive officer of Atratech, Inc. , d/b/a Hi-Tech Mechanical, Inc., located at 18-11 43rd Street, Astoria, New York.

5. PATRICK BORELLO was the president of Hi-Tech and a former employee of Arc.

6. AUGUSTO AUFIERO was the vice-president of Hi-Tech and a former employee of Arc.

INTRODUCTION

7. In 1977, Anthony Gurino formed Lou-Roe Stables, under which he bought, sold and raced thoroughbred horses. Gurino also owned and operated Arc Plumbing and Heating Corporation in Queens, New York. Arc held contracts from agencies such as the New York City Housing Authority, the New York City Parks and Recreation Department, the New York Department of Sanitation, and the New York City School Construction Authority.

8. In April, 1985, Anthony Gurino purchased real estate in Levy County, Florida in the name of Lou-Roe Properties, Inc. The property was known as Lou-Roe Farms d/b/a Lou-roe Training Center, a 113 acre horse farm in Morriston, Florida. Gurino later transferred title of the farm to his wife, Barbara and son, Louis.

9. In June, 1985, Anthony Gurino was charged with obstruction of justice in the United States District Court for the Eastern District of New York.

10. In May, 1986, Arc Plumbing was barred for three years from obtaining New York City agency contracts because Anthony Gurino failed to disclose his 1985 indictment.

11. In July, 1986, Anthony Gurino created Hi-Tech Mechanical to circumvent the debarment of Arc Plumbing, and installed Patrick Borello and Augusto Aufiero as president and vice president. In 1987, the New York City Board of Professional Responsibility found that Hi-Tech was an "alter-ego" of Arc and barred Hi-Tech from city contracts for three years.

COUNT I

12. From an unknown date but commencing at least as early as June, 1989, and continuing up to and including the date of the filing of this indictment, in Levy County, in the Northern District if Florida, and elsewhere, the defendants,

ANTHONY J. GURINO,
LOUIS GURINO,
BARBARA ANN PACE GURINO,
VINCENT SORENA,
PATRICK BORELLO, and
AUGUSTO AUFIERO,

did knowingly and willfully combine, conspire, confederate and agree with each other and with persons known and unknown to the grand jury to commit an offense against the United States, that is: knowing that the property involved in the financial transactions represented some form of specified unlawful activity, did knowingly and willfully conduct financial transactions affecting interstate and foreign commerce which involved the proceeds of a specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Section 1341, knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of the specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

THE OBJECT OF THE CONSPIRACY

13. The purpose of the conspiracy was to conceal Anthony Gurino's control of and proprietary interest in Hi-Tech Mechanical and to disguise the nature, source, control and ownership of funds fraudulently obtained by Hi-Tech from the New York City Housing Authority, so that Anthony Gurino could use the funds for the construction, furnishing, and operating expenses of Lou-Roe Farms, his horse farm in Levy County, Florida. The defendants accomplished these objectives by submitting false and fraudulent documents to the New York City Housing Authority and by using numerous corporations and bank accounts to channel funds from Hi-Tech in New York to Lou-Roe Farms in Florida.

THE MANNER AND MEANS
BY WHICH THE CONSPIRACY WAS CARRIED OUT

14. In order to conceal Anthony Gurino's interest in Hi-Tech, it was a part of the conspiracy that Hi-Tech merged with Endres Plumbing, then was taken over by Atratech, a shell company, in 1989.

15. In furtherance of the conspiracy, Vincent Sorena, Patrick Borello, and Augusto Aufiero induced the New York City Housing Authority to enter into plumbing contracts with Hi-Tech based on correspondence, bids, and applications in which Sorena, Borello, and Aufiero stated that Hi-Tech had no ties, connections, or affiliation with Arc. Additionally, and as part of the conspiracy, false statements were made to the United States Department of Housing and Urban Development, which funded the money disbursed by the New York City Housing Authority to Hi-Tech.

16. In furtherance of the conspiracy, Sorena, Borello, and Aufiero caused documents carrying communications relating to the contracts between Hi-Tech and the New York City Housing Authority to be placed in the United States mail between 1989 and 1991.

17. In furtherance of the conspiracy, Anthony Gurino maintained and exercised control over the financial operations of Hi-Tech, which continued to exist as the "alter-ego" of Arc. In that capacity, Anthony Gurino directed and controlled funds received by Hi-Tech from the New York City Housing Authority and other entities and diverted approximately $1 million through corporations which served as conduits for the flow of money to Lou-Roe Farms in Levy County, Florida.

18. In furtherance of the conspiracy, Barbara Ann Pace Gurino owned and operated B.A.P. Construction Management Services, the primary conduit for money flowing from Anthony Gurino at Hi-Tech in New York to Lou-Roe Farms in Florida.

19. In furtherance of the conspiracy, Louis Gurino received and controlled the money Anthony Gurino fraudulently obtained from the Housing Authority, after it was funneled into Lou-Roe Farms, by controlling the bank accounts of Lou-Roe Farms.

OVERT ACTS

20. In furtherance of the conspiracy, and to effect the objects thereof, the defendants committed and caused to be committed the following overt acts, among others, in the Northern District of Florida and elsewhere:

(1) On or about June 6, 1989, Vincent Sorena, Patrick Borello, and Augusto Aufiero advised the United States Securities and Exchange Commission that Hi-Tech Mechanical, Inc. was a wholly-owned subsidiary of Atratech, Inc.

(2) On or about June 12, 1989, Anthony Gurino and Augusto Aufiero caused a check in the amount of $40,000.00, drawn on the account of Atratech, Inc., to be paid to the Barnett Bank of Ocala, Florida, as a mortgage payment for property in Levy County, Florida, on which Lou-Roe Farms was located.

(3) On or about August 3, Anthony Gurino and Barbara Ann Pace Gurino incorporated B.A.P. Construction Management Services, Ltd., located at 185-07 80th Drive, Queens, New York.

(4) On or about September 19, 1989, Patrick Borello filed a Business Entity Questionnaire with the New York City Housing Authority.

(5) On or about October 19, 1989, Anthony Gurino prepared an office memorandum.

(6) On or about December 1, 1989, Hi-Tech Mechanical, Inc. merged with Endres Plumbing Corporation and became a wholly-owned subsidiary of Atratech, Inc. under the name, Hi-Tech Mechanical, Inc.

(7) On or about January 5, 1990, Hi-Tech received an invoice for Arc Plumbing.

(8) On or about January 10, 1990, Vincent Sorena wrote an interoffice memorandum.

(9) On or about February 17, 1990, at Lou-Roe Farms in Morriston, Florida, Louis Gurino received a check in the amount of $25,000.00 drawn on the account of Cardinal Plumbing and Heating.

(10) On or about February 23, 1990, Hi-Tech received an invoice for Arc Plumbing.

(11) On or about April 25, 1990, at Lou-Roe Farms in Morriston, Florida, Louis Gurino received a check in the amount of $5,000.00, drawn on the account of B.A.P. Construction Management Services.

(12) On or about May 16, 1990, at Lou-Roe Farms in Morriston, Florida, Louis Gurino received a check in the amount of $10,000.00, drawn on the account of B.A.P. Construction Management Services.

(13) On or about August 22, 1990, at Lou-Roe Farms in Morriston, Florida, Louis Gurino received a check in the amount of $5,000.00, drawn on the account of B.A.P. Construction Management Services.

(14) On or about September 20, 1990, at Lou-Roe Farms in Morriston, Florida, Louis Gurino received a check in the amount of $10,000.00, drawn on the account of B.A.P. Construction Management Services.

(15) On or about October 15, 1990, Anthony Gurino, d/b/a Arc Plumbing and Heating, sent a letter to Arc-Matic Corporation at 18-11 43rd Street, Astoria, New York.

(16) On or about November 19, 1990, Patrick Borello and Augusto Aufiero filed a Previous Participation Certification with the U.S. Department of Housing and Urban Development.

(17) On or about December 11, 1990, at Lou-Roe Farms in Morriston, Florida, Louis Gurino received a check in the amount of $25,000.00 drawn on the account of B.A.P. Construction Management Services.

(18) On or about December 28, 1990, Anthony Gurino caused a check in the amount of $100,000.00, drawn on the account of Jocanso, Inc., to be sent to Louis Gurino at Lou-Roe Farms in Morriston, Florida.

(19) On or about January 22, 1991, at Lou-Roe Farms in Morriston, Florida, Louis Gurino received a check in the amount of $5,000.00, drawn on the account of B.A.P. Construction Management Services.

(20) On or about February 27, 1991, Vincent Sorena sent a letter to the New York City Department of Sanitation.

(21) On or about February 27, 1991, Patrick Borello sent a letter to the New York City Department of Sanitation.

(22) On or about March 7, 1991, at Lou-Roe Farms in Morriston, Florida, Louis Gurino received a check in the amount of $5,000.00, drawn on the account of B.A.P. Construction Management Services.

(23) On or about April 22, 1991, Anthony Gurino and Barbara Gurino sent a check in the amount of $50,000.00, drawn on the account of B.A.P. Construction Management Services, to the Barnett Bank of Ocala, Florida, for the property in Levy County, Florida, on which Lou-Roe Farms was located.

(24) On or about May 1, 1991, Anthony Gurino and Barbara Gurino sent a check in the amount of $50,000.00, drawn on the account of B.A.P. Construction Management Services, to the Barnett Bank of Ocala, Florida, for the property in Levy County, Florida, on which Lou-Roe Farms was located.

(25) On or about May 15, 1991, at Lou-Roe Farms in Morriston, Florida, Louis Gurino received a check in the amount of $5,000.00, drawn on the account of B.A.P. Construction Management Services.

All in violation of Title 18, United State Code, Section 371.

COUNTS II THROUGH III

1. The Grand Jury realleges and incorporates herein as if set forth in full paragraphs 1 through 11 of this indictment and further alleges:

2. That on or about the dates set forth in the Northern District of Florida and elsewhere, the defendants,

ANTHONY J. GURINO,
LOUIS GURINO,
BARBARA ANN PACE GURINO,
VINCENT SORENA,
PATRICK BORELLO, and
AUGUSTO AUFIERO,

aided and abetted by each other and others, and knowing that the transactions were designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of certain proceeds and that the property involved in the transactions represented the proceeds of some form of unlawful activity, did knowingly and willfully conduct and attempt to conduct financial transactions to wit: the transfer of funds from companies located at 18-11 43rd Street, Astoria, New York to Lou-Roe Farms in Morriston, Florida, which transactions affected interstate and foreign commerce and involved the proceeds of a specified unlawful activity, that is, mail fraud in violation of Title 18, United States Code, Section 1341, and which transactions are more particularly described below:

COUNT	DATE	NEW YORK COMPANY TRANSFERRING FUNDS	AMOUNT
II	02/17/90	Cardinal Plumbing	$ 25,000
III	05/10/90	Cardinal Plumbing	$ 2,000
IV	05/16/90	B.A.P.	$ 10,000
V	06/25/90	Cardinal Plumbing	$ 20,000
VI	08/22/90	B.A.P.	$ 5,000
VII	08/29/90	B.A.P.	$ 10,000
VIII	08/30/90	B.A.P.	$ 10,000
IX	09/20/90	B.A.P.	$ 10,000

X	12/11/90	B.A.P.	$ 25,000
X	12/18/90	B.A.P.	$ 4,900
XII	12/28/90	Jocanso, Inc.	$100,000
XIII	01/22/91	B.A.P.	$ 5,000
XIV	02/21/91	B.A.P.	$ 2,000
XV	03/07/91	B.A.P.	$ 5,000
XVI	03/19/91	B.A.P.	$ 4,000
XVII	05/01/91	B.A.P.	$ 6,000
XVIII	05/08/91	B.A.P.	$ 1,500
XIX	05/15/91	B.A.P.	$ 5,000
XX	05/21/91	B.A.P.	$ 3,500
XXI	05/29/91	B.A.P.	$ 4,000

All in violation of Title 18, United States Code, Sections 1956 (a) (1) (B) (i) and 2.

A TRUE BILL:

____
FOREPERSON

____
Date

s/s Kenneth W. Sukhia
KENNETH W. SUKHIA
United States Attorney

____
R. JEROME SANFORD
Assistant U.S. Attorney